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Book A683

PAPERS

RELATIVE TO THE

ORIGIN AND PRESENT STATE

OF THE

QUESTIONS

PENDING WITH THE

UNITED STATES OF AMERICA,

ON THE SUBJECT OF THE

MALVINAS, (FALKLAND ISLANDS,)

LAI D BEFORE THE LEGISLATURE OF BUENOS-AYRES

BY THE GOVERNMENT OF THE PROVINCE CHARG-

ED WITH THE DIRECTION OF THE FO-

REIGN RELATIONS OF THE

ARGENTINE REPUBLIC.

BUENOS-AYRES:

PRINTED AT THE OFFICE OF THE GACETA MERCANTIL.

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[TRANSLATION.]

TO THE HON. HOUSE OF REPRESENTATIVES OF
THE PROVINCE.

BUENOS-AYRES, September 18, 1832.

THE Delegate Government has the honor to inform the Gentlemen of the House of Representatives, that, in pursuance of the communication made by His Excellency the Governor, in his message to the Legislature, on the subject of the unpleasant occurrence which had taken place at the island of La Soledad, (one of the Malvinas,) it has deemed it its duty to lay before them all the papers relative to the origin and present state of the negotiation carried on, in consequence thereof, prior to the departure of the U. S. sloop of war *Lexington*, captain Silas Duncan, from these roads for the Malvinas; and subsequently, from the arrival of the Minister of the Government of Washington till the moment of his receiving his passport.

The Hon. Representatives of the Province, on perusing this correspondence, will doubtless find, that, in this weighty and delicate affair, the Government has endeavoured to fulfil, as it promised, its resolution of sustaining its rights with firmness; seeking, by the pacific means which *honesty, good faith and sound reason* suggest, reparation for the scandalous aggression and heinous outrage committed by an officer of the U. S. Navy.

The Government flatters itself that the Cabinet of Washington will not sully its glory, nor cast a blot upon its fame, by refusing to make such redress as becomes the honor and dignity of the two Republics.

His Excellency the Governor has directed that such further information as may be required on the subject, shall be afforded your Hon. House, through the Minister of Foreign Relations, who will attend your Hon. House for that purpose.

The undersigned has, on this occasion, the pleasure of saluting the Gentlemen of the House of Representatives with his highest consideration and respect.

MANUEL VICENTE DE MAZA.



[No. I.]

(COPY.)

CONSULATE OF THE UNITED STATES OF AMERICA, }
 Buenos-Ayres, 21st. November, 1831. }

THE undersigned, Consul of the United States, has the honor to make known to His Excellency the Minister for Foreign Affairs, that he has this moment been informed of the arrival in this port yesterday of the American schooner Harriet, Davison master, of Stonington, a prize to this Government forcibly taken at the Falkland Islands by orders of Governor Vernet.

The undersigned is at a loss to conceive upon what possible ground a bona-fide American vessel, while engaged in a lawful trade, should be captured by an officer of a friendly Government, and with which the United States are happily on terms of the most perfectly good understanding and amity. And he cannot bring himself to believe that the Government of Buenos-Ayres will sanction an act which, under its present aspect, must be viewed as one calculated materially to disturb them.

The importance of this subject has induced the undersigned to lose not a moment in bringing it before His Excellency the Minister, with the earnest request, and in the confident expectation, that he will with all convenient despatch inform him if this Government intends to avow and sustain the seizure of the aforesaid vessel.

The undersigned avails himself of this occasion to renew to His Excellency the Minister the assurances of his highest consideration and respect.

GEO. W. SLACUM.



[No. II.]

(TRANSLATION.)

DEPARTMENT OF FOREIGN RELATIONS, }
Buenos-Ayres, Nov. 25, 1831. }

THE undersigned, Minister of Foreign Relations, has received the note under date of the 21st. inst., in which the Consul of the U. S. makes known to him that he has been informed of the arrival in this port of the American schooner *Harriet*, Davison master, of Stonington, a prize taken on the coasts of the Malvinas, by order of Governor Vernet, and requests to be informed whether this Government intends to avow and sustain the seizure of the aforesaid vessel.

To reply duly to the Consul of the U. S., the undersigned Minister can only state that the case of the before-mentioned schooner *Harriet* is now in the Ministry of War and Marine, and that after the customary forms shall have been observed, it will be laid before the Government, whose resolution thereon will be in accordance with what the laws of the country prescribe.

The undersigned salutes the Consul of the U. S. with his most distinguished consideration.

TOMAS MANUEL DE ANCHORENA.



[No. III.]

(COPY.)

CONSULATE OF THE UNITED STATES OF AMERICA, {
Buenos-Ayres, 26th. November, 1831. }

THE undersigned Consul of the United States has the honor to acknowledge the note of H. E. the Minister for Foreign Affairs under date of yesterday, in answer to one from the Consulate dated 21st. inst., in which he is informed that "the subject of the American schooner Harriet is actually before the Department of the Minister of War and Marine, and that after the customary forms shall have been observed, it will be placed before the Government, whose decision will be conformable to what the laws of the country prescribe."

This unexpected reply from H. E. the Minister cannot be viewed by the undersigned in any other light than as a virtual avowal on the part of this Government of the right of Mr. Lewis Vernet to capture and detain American vessels engaged in the fisheries at the Falkland Islands, and the islands and coasts about Cape Horn. It therefore only remains to him to deny *in toto* any such right, as having been, or being now vested in the Government of Buenos Ayres, or in any person or persons acting under its authority; and to add his most earnest remonstrance against all measures which may have been adopted by said Government, including the decree issued on the 10th. of June, 1829, asserting a claim to the before-mentioned Islands and Coasts and the fisheries appurtenant thereto, or any other act or decree having the same tendency, and also the circular letter of the said Vernet, issued in consequence of the same; as well as against all such measures as may hereafter be adopted by said Government, or persons acting under its authority, which are calculated in the remotest degree to impose restraints upon the citizens of the United States engaged in the fisheries in question, or to impair their undoubted right to the freest use of them.

The undersigned cannot but regret that a subject of so important and serious a nature should have arisen; but nevertheless,

his duty to his Government, as well as to the rights and interests of his fellow citizens, impels him to request that H. E. the Minister for Foreign Affairs will be pleased to receive this communication as a formal protest on the part of the Government of the United States against that of Buenos Ayres, and all and every person or persons acting under its authority, for the illegal and forcible seizure at the Falkland Islands aforesaid, by order of the said Ver-net, of the American schooner Harriet, as well as of the Superior and Breakwater, of which the undersigned has also received information ; as also for the violent arrest and imprisonment of their officers and crews, American citizens ; and for the consequences thereof.

The undersigned, in performing this duty, begs H. E. the Minister for Foreign Affairs to accept the assurances of his distinguished consideration and respect.

GEO. W. SLACUM.

His Excellency,

The Minister for Foreign Affairs.



[No. IV.]

(TRANSLATION.)

TO THE CONSUL OF THE UNITED STATES.

DEPARTMENT OF FOREIGN RELATIONS, }
Buenos-Ayres, December 3, 1831. }

THE undersigned, Minister of Foreign Relations, has received the note dated 26th. ult., in which the Consul of the U. S. acknowledges the receipt of that which the undersigned addressed him, under date of the 25th of the same month, stating, in reply to a former communication, that the case of the capture and detention of the American schooner Harriet is in the Ministry of War and Marine, and that after the customary forms shall have been observed, it will be laid before the Government, whose resolution thereon will be in accordance with what the laws of the country prescribe; and then proceeds to state, that this answer being a virtual avowal on the part of this Government of the right of Mr. Lewis Vernet to capture and detain American vessels engaged in the seal-fishery at the Malvinas and the Islands and Coasts adjacent to Cape Horn, he finds himself under the necessity of denying *in toto* any such right as having been, or being now vested in the Government of Buenos-Ayres, or in any person or persons acting under its authority; and of adding his most earnest remonstrance against all measures which may have been adopted by said Government, including the decree issued on the 10th. of June, 1829, asserting a claim to the before-mentioned islands and coasts, and the fisheries appurtenant thereto, or any other act or decree having the same tendency, and also the circular letter of the said Vernet, issued in consequence thereof; as well as against all such measures as may hereafter be adopted by said Government, or persons acting under its authority, which may be calculated in the remotest degree to impose restraints upon the citizens of the United States engaged in the fisheries in question, or impair their right to the freest use of them; and concludes by requesting that the said communication may be received by the undersigned as a formal protest on the part of the Government of the United States against

that of Buenos-Ayres, and all and every person or persons acting under its authority, for the illegal and forcible seizure at the Malvinas, by order of the said Vernet, of the American schooner *Harriet*, as well as of the *Superior* and *Breakwater*, as also for the violent arrest and imprisonment of their officers and crews; and for the consequences thereof.

The aforesaid note having been placed before the Delegate Government, the undersigned received directions to reply, as he now does, to the Consul of the U. S., that the process which this affair is still undergoing in the Ministry of War and Marine, is indifferent with respect to the resolution it may come to upon the main point, and only intended to enable the Government to arrive at the truth, in order to act as in justice bound: that it cannot admit the said communication of the Consul of the U. S. as a formal protest of his Government against that of this Province; as, besides its being untimely, the Consul does not make it appear that he is especially authorized for this purpose, and the Government considers that he is not, from his being only invested with the character of Consul, and the more so as it is an undoubtable fact that the Government of the U. S. possesses no right to the aforesaid islands or coasts, nor to the fisheries thereon, whilst that vested in this Republic is unquestionable: that consequently the Government might find a just ground of complaint on the protest of the Consul; but it is willing to suppose him actuated by upright motives, and being fully convinced of the wisdom and justice which preside over the councils of his Government, is desirous to avoid any serious measure; hoping that any question which may arise with the Government of the United States will be amicably arranged by a direct understanding between the two Governments.

The undersigned avails himself of this opportunity to renew to the Consul of the U. S. the expressions of his consideration and respect.

TOMAS M. DE ANCHORENA.



[No. V.]

(COPY.)

CONSULATE OF THE UNITED STATES OF AMERICA, }
Buenos-Ayres, 3d. December, 1831. }

THE undersigned Consul of the United States has the honor to transmit herewith to H. E. the Minister for Foreign Affairs, a copy of a letter received yesterday from Silas Duncan, Esq., commanding the United States ship Lexington off this city.

The undersigned avails himself of this occasion to salute H. E. the Minister with his most distinguished consideration.

GEO. W. SLACUM.

His Excellency,

The Minister for Foreign Affairs.



[No. VI.]

(COPY.)

U. S. SHIP LEXINGTON, }
 Off Buenos-Ayres, River Plate, Dec. 1st., 1831. }

SIR :

I have received your reply to my communication of the 29th. ult., enclosing copies of Documents in relation to the capture of several American vessels at the Falkland Islands, while engaged in the fisheries ; and, having given them the proper consideration, I consider it to be my duty to proceed thither with the force under my command, for the protection of the citizens and commerce of the United States engaged in the fisheries in question.

I also learn, that, in consequence of these captures, seven Americans have been abandoned upon the Island of Staten Land without the means of subsistence.

Under these circumstances, I have to request you will be pleased to communicate a copy of this letter to the Government of Buenos Ayres, under whose authority certain individuals have assumed to capture American vessels, in order that no misunderstanding shall arise with respect to the object of my visit to the Falkland Islands, and in conformity with the open and candid mode in which the affairs of the United States are conducted.

I have the honor to be, with great respect,

Your very ob't. Servant,

(Signed,) S. DUNCAN:

Commander U. S. Ship Lexington:

GEO. W. SLACUM, Esq.,

United States Consul, Buenos-Ayres, River Plate:



[No. VII.]

(TRANSLATION.)

TO THE CONSUL OF THE UNITED STATES.

BUENOS-AYRES, Dec. 6, 1831.

THE undersigned has received the note which the Consul of the U. S. has addressed him, under date of the 3d. inst., transmitting copy of a letter which he has received from Mr. Silas Duncan, Commander of the ship *Lexington*, in this port.

The undersigned has the honor to inform the Consul of the U. S. that this note has been referred to the Minister of War, and avails himself of the opportunity to salute him with his highest consideration.

TOMAS MANUEL DE ANCHORENA.



[No. VIII.]

(COPY.)

CONSULATE OF THE UNITED STATES, }
Buenos-Ayres, Dec. 6th, 1831. }

THE undersigned Consul of the United States has the honor to acknowledge the receipt of the note of H. E. the Minister for Foreign Affairs, under date 3d. instant.

In communicating with the commander of the United States ship Lexington, whose intention of immediately proceeding to the Falkland Islands, for the protection of American citizens engaged in the seal-fishery, has already been made known to H. E. the Minister, he has suggested to the undersigned the propriety, as indicating the frankness by which his measures will be governed, of proposing that he will delay his departure until the morning of the 9th. inst., in order to wait the receipt of any communications which the Government of this Province may think fit to make, having reference to the immediate suspension of the exercise of the right of capture of the vessels of the United States which may be found fishing within the limits claimed to be subject to the jurisdiction or authority of Mr. Vernet. And also, coupling with such suspension the immediate restoration to the legitimate owners or agents, of the schooner Harriet now detained as a prize to this Government at this port, as well as of all the property illegally taken out of said schooner at the time of her capture or since; or from American citizens, at the Falkland Islands or elsewhere, by the said Vernet or his agents; and moreover, the placing them in the position in which they stood previous to the aforesaid captures, and the interference in the business in which they were lawfully engaged.

The undersigned begs leave to suggest to H. E. the Minister that the shortness of the period within which the said commander can wait for an answer from this Government to the aforesaid propositions, is in consequence of his anxiety to relieve as soon as may be, several distressed American seamen, left by one of the captured schooners, with a limited supply of provisions on Staten Land, as well as to put an immediate stop to further captures which may be making at the said Falkland Islands, by the agents of said Vernet, whom he left in command there, authorized to that effect.

The undersigned is requested by the said Commander further to manifest to H. E. the Minister that the propositions above-mentioned are based upon the spirit of the friendly relations which are known happily to subsist between the Government of the United States and that of this Province,—and more especially, upon the suggestion contained in the note of H. E. the Minister, that it is the desire of this Government amicably to settle the question of right in relation to the afore-mentioned fisheries, by a direct understanding with the Government of the United States,—until which can take place, the undersigned concurs in opinion with the said Commander, that the citizens of the United States should be subject to no further molestation in prosecuting them.

In concluding this note, the undersigned, willing to remove any doubt as to his right to protest, would observe that in so doing he acted under authority from his Government; and that he cannot consent to its rejection or withdrawal, even had no such authority existed, as he has been considered, and treated with by this Government, as the representative of that of the United States, since the decease of the late Chargé d’Affaires; and he would not willingly believe that the Government of Buenos Ayres would at this time offer any denial of such right so as to preclude him from defending the interests of American Citizens.

The undersigned trusts, that H. E. the Minister will receive this communication as a continued earnest of his sincere desire to do all in his power to maintain unimpaired the present friendly relations of the two Governments.

The undersigned avails himself of this occasion to renew to H. E. the Minister for Foreign Affairs the assurances of his most distinguished consideration and respect.

GEO. W. SLACUM.

His Excellency,

The Minister for Foreign Affairs.



[No. IX.]

(TRANSLATION.)

TO THE CONSUL OF THE UNITED STATES.

DEPARTMENT OF FOREIGN RELATIONS, }
Bucnos-Ayres, December 9, 1831. }

The undersigned, Minister of Foreign Relations, has the honor to inform the Consul of the U. S., that the Minister of War and Marine has communicated to the undersigned, under date of the 7th inst., that the Commandant of the Malvinas, Mr. Luis Vernet, having presented a memorial soliciting that the departure of Mr. Gilbert Davison, Captain of the American schooner *Harriet*, should be prohibited until he should leave an agent duly authorized; the said memorial was referred to the Attorney General, to whom the papers relative to the capture of the aforesaid vessel had been transmitted; and orders having been issued to the Captain of the Port to prevent the departure of the said Davison; that officer returned for answer that having given the suitable directions to the Ajudant of the Port, the latter reported that, previously to their receipt, Capt. Davison had embarked in a boat of the U. S. Ship *Lexington*, to go on board that vessel. And as such a step on the part of Capt. Davison appears to be calculated to embarass the legal proceedings and the just decision of the case of the before mentioned schooner *Harriet*; the undersigned has received orders from the Government of this province to require, as he now does, that the Consul of the U. S. will have the kindness to notify to Capt. Gilbert Davison not to absent himself from this province without leaving an agent duly authorized to represent him and act for him in the said affair; with the understanding that, his refusal or omission in this respect, will render him liable to all the damages resulting therefrom according to law.

The undersigned avails himself of this opportunity to salute the Consul with his highest consideration and respect.

TOMAS MANUEL DE ANCHORENA.



[No. X.]

(COPY.)

U. S. SHIP LEXINGTON,
Off Buenos Ayres, River Plate, Dec. 7th, 1831. }

SIR :

I have it in proof, upon oath, that Lewis Vernet now a resident at this place, did plunder the American schooner *Harriet* of almost every article on board said schooner while lying at the Falkland Islands.

The object of this note is to request, that the said Lewis Vernet having been guilty of piracy and robbery be delivered up to the U. States to be tried, or that he be arrested and punished by the laws of Buenos Ayres.

I have the honor to be with respect

Your obedient servant,

S. DUNCAN,

His Excellency,

THOMAS MANUEL ANCHORENA,

Minister for Foreign Affairs.



[No. XI.]

(TRANSLATION.)

TO THE CONSUL OF THE UNITED STATES.

BUENOS-AYRES, Dec. 9, 1831.

The undersigned, Minister of Foreign Relations, received on the 7th inst., the note of the Consul of the U. S. dated the day previous, which was immediately placed before the Government of the Province. Steadfast in the same views and principles which the undersigned has manifested to the Consul of the U. S. on the subject to which his note relates, the Government has observed with surprise, that although aware of the multifarious weighty and urgent attentions by which, it is notorious that this Government is at present surrounded, and that a religious solemnity being celebrated here yesterday, the public offices would be closed, he did not deem it a breach of propriety and decorum to propose to the undersigned for this day precisely, the decision of a private litigated affair, in which, for that reason, the Consul could have no right to interfere; and which, having to be investigated and decided conformably to the laws of the country, requires, from its nature, the course of various forms, and a serious and attentive consideration, in order not to defraud justice.

It is true that the Consul of the U. S. affirms that the shortness of the period within which the Commander of the U. S. Ship *Lexington* can await an answer from this Government to the propositions made by the Consul, is in consequence of his anxiety to relieve as soon as possible, several American seamen, left by one of the captured schooners with a scanty supply of provisions in Staten Land, as likewise to put an immediate stop to such further captures as may be making in the Malvinas by the Agents whom Mr. Vernet left in command there, authorized for that purpose. But be that as it may, and waving the motives which the said Commander may have for proceeding to the aforesaid Islands, this does not give any right to the Consul of the U. S. to interpose himself before the Government of this Province in a private contentious affair, in which there are parties who can exercise their rights either by

themselves or through their agents duly authorized to that effect. Nor will the Government ever deviate from the line of conduct which justice and its own dignity point out to it, whatever the aforesaid Commander may think or do; the Government not recognizing in him any right to interfere in affairs of this nature.

But, as it desires to preserve unimpaired the relations of friendship which it happily maintains with the Government of the U. S.; and is persuaded that hitherto no pretext has, in anywise, been afforded on its part for their interruption, it has directed the undersigned to declare to the Consul of the U. S., that if the Commander of the *Lexington*, or any other person dependent on the said Government, should commit any act, or take any steps tending to set at naught the right which this Republic possesses to the Malvinas, and other islands and coasts adjacent to Cape Horn, and to prohibit the seal fisheries thereon, especially on the former; the Government of this Province will address its formal complaint to that of the U. S., in the firm confidence that it will be attended to as justice may direct, and it will use every means which it may deem expedient to assert its rights and cause them to be respected; as it is fully persuaded that the Government of the U. S. has not denied nor will deny those rights, and that in case any other question connected with them should arise, it will not attempt to decide it by force, despoiling this Government of the possession which it holds.

For the rest, the Consul labors under a very remarkable mistake in supposing that this Government has considered and treated him as the Representative of the U. S. since the decease of Mr. Forbes, Chargé d'Affaires near this Republic; and he ought to have known that it could not consider him as invested with any other character than that of simple Consul of the said U. S. in this Republic. Viewing him in this light, and the extent of the Consular functions being well known, the chief of which is to exert himself in order that his fellow citizens respect the laws and authorities of the country in which he resides; this Government hopes that he will henceforth circumscribe himself to those functions, and cease to persist in the protest which he has made against rights which have been, and are vested in this Government, and which no one as yet has called in question.

The undersigned, after having discharged his duty in this communication, has the honor to renew to the Consul of the U. S., the assurances of his consideration and respect.

TOMAS MANUEL DE ANCHORENA.



[No. XII.]

(COPY.)

CONSULATE OF THE UNITED STATES OF AMERICA, }
Buenos-Ayres, 15th. December, 1831. }

THE undersigned, Consul of the United States, has the honor to acknowledge the receipt of the two notes addressed to him by His Excellency the Minister for Foreign Affairs, under date of the 9th. instant, and which were delivered into his hands at 5 o'clock P. M. of the same day.

In reply to that complaining of the conduct of Captain Davison, late of the prize schooner Harriet, in embarking to go on board of the United States' Sloop-of-war Lexington, for the purpose, as is assumed by His Excellency the Minister, of embarrassing the proceedings which may be carrying on in the Tribunal here for procuring the condemnation of said schooner, and in which it is urged upon the undersigned to notify the said Captain Davison not to depart from the Province, without previously appointing an Attorney or Agent to represent him in the said prosecution; the undersigned begs leave to say that it was a matter of notoriety that the Sloop-of-war Lexington, weighed anchor and left this port, at 12 o'clock, M., of the 9th., several hours previous to the receipt of the said note by the undersigned, so that any efforts on his part to have detained the said Captain Davison, would have proved ineffectual, had he deemed it to be a part of his official duty to have made any at the urgency of this Government, appearing to be solely founded upon a memorial or solicitude of Lewis Vernet.— Moreover, it had been communicated to His Excellency the Minister, that the Lexington would remain in port until the morning of the 9th., at which time it was to be presumed of course that she would sail, and it appears that the Government were advised of the said Captain Davison's having embarked to go on board of the said Sloop-of-war on the 7th., so that a sufficient time seems to have been afforded to this Government, to have served any notification upon him, which they might choose, without insinuating or charging upon him the intention of withdrawing from the Province, for any sinister purpose; or protesting against him for damages, for that act, or its results. But after all, the undersigned does not

perceive upon what principles this Government could have undertaken to detain the said Captain Davison, an American citizen, already the victim of a protracted incarceration, with a view to coerce him to execute a Power of Attorney under any pretence or for any purpose, which might be alleged by the said Vernet; when he, the said Davison, has not thought proper to present himself in the Tribunals to litigate any question with the said Vernet, but to deny *in toto* the right of capture in this Government, of his schooner engaged in sealing at the Falkland Islands, and against which the undersigned has protested on his behalf and that of those whom he represents; he the said Davison, having, on his arrival here, thrown himself upon the undersigned for protection and redress.

In replying to the other note of His Excellency, the receipt of which is acknowledged as above, the undersigned in the first place takes the liberty to remark, that he cannot assent to the propriety of any application to him of the strong expressions of His Excellency the Minister, if such was intended, in reference to any non-observance of the 8th. as a day of religious solemnity, not being aware of any want of decorum in this respect on his part, as the note communicating the propositions of the Oommander of the Lexington, was handed to the chief clerk of the Ministry of Foreign Relations on the morning of the 7th. instant, and if the interval from that time until 12 o'clock, M. of the 9th. when the Ship sailed, may have been deemed too short for this Government to resolve whether they would or would not restore the property of American citizens illegally seized upon by Lewis Vernet, at the Falkland Islands; it is proper for the undersigned to observe that this period, or its limit, which was the time of sailing of the Lexington, was not fixed by him, as it could not be, but by the Commander of said Ship, and from motives of humanity, particularly in relation to seamen left exposed on a desert island, as explained in said note. And here the undersigned is constrained to note an error into which His Excellency the Minister, appears to have fallen, in attributing to him the propositions referred to, when on the contrary, they are declared by the undersigned to have emanated from the Commander of the Lexington, and were communicated at his request; and in regard to these propositions the undersigned is not aware that they involved the "resolution of a private litigious affair," as is expressed by His Excellency, but on the contrary, nothing more than an assent or denial to restore property illegally captured at the Falkland Islands, from American citizens while engaged in a trade to which they have the most undoubted right; the claim to which, the undersigned has authority from his Government to assert, as he has already made known to His Excellency the Minister; and which raises a question to be settled, not by the local Tribunal of this country; not by a private litigation between Mr. Vernet and

Captain Davison, or any other private parties, but by the Government of the Province and that of the United States, if not of the other maritime nations, who are all interested in the free use of unappropriated fisheries, as they are of the highway of the ocean. And it was with the view that the question of right might so be referred, to be settled amicably, that the propositions before mentioned were made by the Commander of the Lexington, and which it was supposed would accord with the friendly feelings declared by His Excellency the Minister, to be entertained by this Government, towards that of the United States, and the result would have been, if fortunately the propositions had been admitted the placing matters on the footing on which they stood previous to the outrages committed by the aforesaid Vernet. And in this connexion, the undersigned will observe that notwithstanding it was distinctly stated by him in his note, dated the 6th. instant, which he had the honor to address to His Excellency the Minister, that in protesting against the captures of American sealing vessels at the Falkland Islands, &c., he acted under the authority of his Government, His Excellency, the Minister, has subsequently called it in question in his note of the 9th. ; therefore the undersigned, in order to remove all further doubt from the mind of His Excellency, upon this part of the subject, altho' he deemed his first assertion of the fact sufficient, now begs leave to inform him, that in consequence of indirect information being lately laid before his Government, of the decree of the 10th. of June, 1829, asserting a right of sovereignty to the Falkland Islands, &c., and of the exclusive use of the fisheries appurtenant to them; formal instructions were sent out to the late Chargé d'Affaires of the United States, to address to this Government "an earnest remonstrance against any measures that may have been adopted by it, including the decree and circular letter referred to, if they be genuine, which are calculated in the remotest degree to impose any restraints whatever upon the enterprize of the citizens of the United States engaged in the fisheries, in question, or to impair their undoubted right to the freest use of them;" the said fisheries, having heretofore always been considered as free to all nations whatever and the exclusive property of none.

That such remonstrance was not made by the late Chargé d'Affaires was probably owing to the circumstance that the despatches did not reach this country until a short time previous to his death.

In further answer to His Excellency the Minister, the undersigned does not consider himself called upon to reply to any thing contained in the note now under consideration, which has reference to the motives of the Commander of the Lexington in proceeding with his Ship to the Falkland Islands, even if these had been, as he deems they were, frankly expressed in the communication transmitted, containing his propositions; nor to the intimation of this

Government that it will pursue the course which it has marked out to itself, whatever the said Commander may think or do; these being matters solely for his own consideration, for which the undersigned is clearly not responsible; but the undersigned cannot admit that he has "improperly interposed himself before the public Authority of this Province," as declared by His Excellency the Minister,—in any thing that he had done, either in asking of this Government an avowal or disavowal of the capture of the schooner *Harriet* by Lewis Vernet, (styled by His Excellency, the Minister, "Comandante of the Falkland Islands,") which was the purport of his first note; or in protesting against the same as in his second note; or in being the medium of communicating, in a sincere spirit of frankness, the amicable propositions of the Commander of the *Lexington*, as in his late note in relation to this unpleasant business, which he cannot consider with His Excellency as a "private contentious affair," and "to be resolved by this Government conformably to what the laws of the country prescribe," but as one of a very different and very serious nature, involving an attack upon the "rights and privileges of his nation and its citizens," which it is his first and principal duty as Consul to endeavor at least to protect, altho' His Excellency seems to be of a different opinion; and the resolution of which the municipal or local laws, or *trámites de estilo* of this Province have no more to do than those of the United States. But perhaps the undersigned ought to be delicate in expressing his opinion in regard to the nature and extent of his duties as Consul, seeing that he has been chided by His Excellency in that particular, and who has deigned to intimate to him, that the principal of those duties is, to maintain over his fellow citizens a supervision in regard to their conduct in the country in which he resides.

In conclusion the undersigned begs leave to say, that while he is unaware of any want of decorum or of improper interference in his official capacity before the Authorities of this Province, in the course which he has taken in this affair, or the correspondence to which it has given rise, he still deems it to be his duty to continue to insist upon the Protest which he has transmitted to this Government; which the nature of the transaction in question so imperiously demanded; and a failure in presenting which, would have been an omission of duty, and a relinquishment of an unalienable consular right.

This Protest is rejected by His Excellency the Minister, and if the undersigned is not charged with having transcended the line of his duty, he is counselled to confine himself within it. But what are the facts which called for that Protest? Have not three American vessels, while engaged in a lawful trade been captured, and their cargoes forcibly and illegally taken out of them and imme-

diately appropriated to the use of the captors ; have not their officers and crews, American citizens, been violently arrested and imprisoned ; has not a part of them been sent to a foreign land and there thrown upon the bounty of strangers ; while another part has been abandoned upon the distant and desolate Island of "Staten Land," without a supply of provisions, and this too by a person holding his authority under, and now protected by this Government, with which that of the United States is at peace ; and has this not been done without any previous official notice having been given to the latter that the former had set up claims of sovereignty and exclusive jurisdiction to the Islands and fisheries in question ?

And is it under circumstances like these, that the undersigned is told he shall not be heard in defence of the injured rights and interests of his fellow citizens ?

Responsible only to his own Government for his official conduct, he expects the full and free exercise of his public functions as Consul of the United States, so long as he shall continue within the line of his duty, and to observe a due courtesy and respect towards the Government near which he resides. Having nothing further to add in the present stage of this business, the undersigned will content himself by referring the whole matter to the consideration of his Government.

The undersigned avails himself of this occasion to renew to His Excellency the Minister, the assurances of his most distinguished consideration and respect.

GEO. W. SLACUM.

His Excellency,

The Minister for Foreign Affairs.



[No. XIII.]

(TRANSLATION.)

TO THE CONSUL OF THE UNITED STATES.

DEPARTMENT OF FOREIGN RELATIONS, }
Buenos-Ayres, February 14, 1832. }

The undersigned, Minister of Foreign Relations, addresses Mr. George W. Slacum, Consul of the U. S. in this city, for the purpose of acquainting him, that the Government considering the aberration of ideas and irregularity of language in his official notes, relative to the occurrences with the American fishing vessels on the coasts of the Malvinas, belonging to and in possession of this Republic, and the prejudices his conduct has given rise to, especially since the aggression perpetrated by the Commander of the U. S. Ship *Lexington*, at said Islands; and that the strong excitement which that violence has produced, requires the careful removal of every thing that can directly or indirectly sour the public mind, and disturb the moderation and temperance with which affairs between civilized and friendly Governments ought always to be conducted; has judged it expedient and conducive to those ends, to suspend all official intercourse with Mr. Slacum, who can appoint any person properly qualified to substitute him in his consular functions; of which resolution due notice is given to the Government of the U. S., who will doubtless be satisfied, as well with the object, as the motives which produce it.

The undersigned salutes the Consul of the U. S., with due attention.

MANUEL J. GARCIA.



[No. XIV.]

(TRANSLATION.)

THE DELEGATE GOVERNMENT OF THE PROVINCE
TO THE PEOPLE.

FELLOW CITIZENS!

The official details collected by the Government, have confirmed the truth of the scandalous acts, stated to have been committed in the Malvinas. The Commander of the U. S. Ship *Lexington* has invaded, in a time of the most profound peace, that, our infant colony; destroyed with rancorous fury the public property, and carried off the effects legally deposited there at the disposal of our Magistrates. The colonists being unexpectedly assaulted under a friendly flag, some of them fled to the interior of the island; and others, violently torn from their homes, or deluded by deceitful artifices, have been brought away and cast clandestinely upon the shores of the Oriental State, which now extends to them a generous hospitality; whilst others, natives and fellow-countrymen of ours, are conducted as prisoners to the U. S. for the ostensible purpose of being tried there. The unanimous burst of indignation which this outrage has produced in you, is fully justified; and the same feeling will doubtless be evinced by men of honor in every part of the world, when they hear of this transaction.

But, citizens, it is as impossible that the Government of Washington should approve of such aggressions, as that your Government should tolerate them in silence. The former, acting up to the principles of moderation and justice which characterize it, will doubtless give satisfaction correspondent to the dignity of the two Republics. In the mean time, be assured that, whatever may be the issue of these unpleasant occurrences, your Government will maintain the inviolability of the persons and property of North American citizens, with the same firmness as it will support its own rights, and in no case will stain itself with an ignoble reprisal upon innocent men who are under the safeguard of the national honor.

JUAN RAMON BALCARCE.

MANUEL J. GARCIA.

BUENOS AYRES, 14th February, 1832.



[No. XV.]

(COPY.)

CONSULATE OF THE UNITED STATES OF AMERICA, }
Buenos Ayres, 15th February, 1831. }

THE undersigned, Consul of the U. S., has the honor to transmit to H. E. the Minister of Foreign Affairs copy of a note this moment received from the Commander of the U. S. Ship Lexington, who writes to the undersigned that he will await an answer from him being on the eve of sailing for Rio de Janeiro.

The undersigned has the honor to salute H. E. the Minister of Foreign Affairs with his most distinguished consideration and respect.

GEO. W. SLACUM.

His Excellency,
The Minister of Foreign Affairs,
&c. &c. &c.

(COPY.)

U. S. SHIP LEXINGTON, }
Off Montevideo, Febuary 11th, 1832. }

SIR :

I have to state that I will deliver up or liberate the prisoners now on board the Lexington, upon an assurance from the Government of Buenos Ayres that they have been acting by its authority.

I have the honor to be very respectfully, Sir,

Your obedient servant,

(Signed) S. DUNCAN,
Commanding U. S. Ship Lexington.

GEO. W. SLACUM, Esqr.,
U. S. Consul,
Buenos Ayres.



[No. XVI.]

(TRANSLATION.)

DEPARTMENT OF FOREIGN RELATIONS, }
Buenos-Ayres, February 15, 1832. }

THE undersigned, Minister of Foreign Relations, has received the note of Mr. George W. Slacum, dated this day, transmitting copy of a letter from the Commander of the Ship *Lexington*, informing him that he will liberate the prisoners he has on board, upon an assurance from this Government that they have acted under its authority.

The undersigned in reply to Mr. Slacum, begs to state that Mr. Vernet was appointed Military and Political Commandant of the Malvinas, in virtue of the decree of the 1st of June, 1829, published on the 13th of the same month; consequently the said Vernet and the individuals serving under him, can only be amenable to their own authorities. In the mean time, the undersigned salutes Mr. Slacum with his usual consideration.

MANUEL J. GARCIA.

Mr. GEO. W. SLACUM.



[No. XVII.]

(COPY.)

CONSULATE OF THE UNITED STATES OF AMERICA, {
Buenos-Ayres, 16th February, 1832. }

THE undersigned, Consul of the U. States, has the honor to acknowledge the receipt of the note of H. E. the Minister of Foreign Affairs, under date of the 14th instant; in which H. E. makes known to him "that the Government, considering the irregularity of ideas and of language of the official notes of Sr. Consul relative to the occurrences with the American fishing vessels on the coasts of the Malvina Islands, belonging to, and in possession of this Republic, and the prejudices his conduct has excited, especially since the aggression perpetrated by the Commander of the U. S. Ship Lexington, at said islands; and that the lively sensation which that violence has produced, requires the diligent removal of every thing that can sour minds or disturb the moderation and temperance with which affairs between civilized and friendly governments ought always to be conducted; has judged it opportune and conducive to those ends, to suspend all official relation with Mr. Slacum, who can name, to substitute him in his consular functions, any person duly qualified: of which resolution, corresponding notice is given to the Government of the United States, which will, no doubt, be satisfied, as well with the object as the motives which produce it."

The undersigned cannot refrain from expressing his surprise at so extraordinary a communication; and, in reply to that part of it which has reference to "the remarkable irregularity of ideas and of language in his official notes," he would observe, that his correspondence upon the subject of the captured American fishing vessels was closed as early as the 15th of December last, in consequence of the communication under date of 9th of that month from H. E. the late Minister of Foreign Affairs, Señor D. Tomas Manuel de Anchorena and the whole matter referred to the consideration of the Government of the United States, as there declared.

In further answer to H. E. the Minister, the undersigned cannot suppress the astonishment which he feels at the allusion made to

his conduct after the result of the visit of the Lexington to the Falkland Islands was made known ; being entirely ignorant of any thing on his part which could possibly call for such intimation ; and in the belief that H. E. labored under a remarkable misconception, he cannot but regret that H. E. had not been so distinct as to have enabled the undersigned to have formed some idea of what was intended, and to have left room for explanation.

However, this Government has thought fit to suspend the consular functions of the undersigned, and to deprive him of his public character ; at the same time, to grant him permission to appoint some person duly qualified to substitute him in the discharge of those functions.

The undersigned will not allow himself to make any observations upon the novelty of this procedure, but will only say that he has not received instructions from his own Government to cease his consular functions here, nor is he authorized, in such a case as this, to appoint a person in his stead. He can, therefore, only leave to this Government the responsibility of the act of his suspension and any, and all measures, which it may deem proper to pursue.

The undersigned avails himself of this occasion to offer to H. E. the Minister of Foreign Affairs the assurances of his highest consideration and respect.

GEORGE W. SLACUM.

His Excellency

Don MANUEL J. GARCIA,

Minister of Foreign Affairs,

&c. &c. &c.



[No. XVIII.]

(COPY.)

LEGATION OF THE UNITED STATES OF AMERICA, }
Buenos-Ayres, June 20th, 1832. }

THE undersigned, Chargé d'Affaires from the United States of America near the government of Buenos Ayres, has the honor to inform His Excellency the Minister of Grace and Justice, charged provisionally with the Department of Foreign Affairs, that he has been instructed by his government to call the attention of this government to certain transactions of Mr. Lewis Vernet, who claims, under a decree of this government, of the date of June 10th, 1829, to be "the Military and Civil Governor of the Falkland Islands, and all those adjacent to Cape Horn, (including Tierra del Fuego,) in the Atlantic Ocean.

Under color of this decree, on the thirtieth day of July last, Gilbert R. Davison, a citizen of the United States and master of a vessel called the Harriet, sailing from Stonington, in the State of Connecticut, one of the said United States, and owned by citizens of the said States—in a time of profound peace, while pursuing lawful commerce and business, was forcibly arrested by a body of armed men, acting under the orders of the governor Vernet, who, at the same time, arrested his boat's crew,—placed him in close confinement,—subsequently seized the Harriet,—forced the crew on shore and imprisoned them all, excepting the mate, cook and steward. The papers of the Harriet and many articles on board were forcibly taken, and a part of the articles were sold by order of the governor, without formal condemnation or any legal process whatever.

On the 17th day of August last, captain Carew, a citizen of the United States, and master of the schooner Breakwater, also sailing from Stonington, and owned by citizens of the United States, in a time of profound peace, while on lawful business, was, by order of governor Vernet, arrested and imprisoned at Port Louis, and the vessel, which lay at St. Salvador, on the following day was forcibly seized, deprived of her papers and detained. She was,

afterwards, recaptured by the crew, who regained their liberty by their courage and prowess, and reached their own country in safety. The master and four men being left on the islands, were compelled by the governor to embark in a British vessel, bound to Rio Janeiro, in Brazil, against the will of the master, who was anxious to proceed to Buenos Ayres in the *Harriet*.

On the 19th of August last, captain Stephen Congar, a citizen of the United States, commanding the schooner *Superior*, sailing from the city of New-York, in the State of New-York, one of the United States, belonging to citizens of the said States, was also, in a period of profound peace, while engaged in lawful business, arrested and imprisoned; and subsequently, this vessel also was forcibly seized and the crew imprisoned, by order of governor Vernet, and vessel, master and crew were forced into his service under the following circumstances. While the captains, Davison and Congar, were prisoners, closely guarded, the governor, by operating on their fears, induced them to enter into an agreement, which, among others, contained the following extraordinary provisions:

Having arrested and imprisoned them in his capacity of Military and Civil Governor, for violating the laws and the sovereignty of this Republic—regardless of the high official character in which he acted, and the dignity of the government under whose appointment he professed to act—instead of bringing them to trial for these offences, he endeavored to compel them to enter his service, for purposes altogether personal, and to substitute himself forcibly in the place of their owners; and degrading the style and dignity of his high office, by calling himself a Director instead of a Military and Civil Governor, and by undertaking to transform himself into a merchant; used his military and civil powers to extort from his prisoners a written obligation in the shape of a mercantile contract, to go with one of their vessels and its crew, beyond his pretended jurisdiction, through the Straits of Magellan to the western coast of South America, for the purpose of taking seals on his account; for which service he afterwards selected the *Superior*, her master and crew.

In mockery of those usages regarded by all Christian nations as solemn and sacred, he compelled these American citizens, with minds depressed by imprisonment and sufferings, and all their prospects of fortune and competency blasted by his oppression, to bind themselves by *oaths* “to do nothing to compromise his interests;” and, in defiance of all legitimate authority and moral and patriotic obligations, compelled them also to agree that any deviation from this compulsory contract should be considered as a “breach of faith,” and that “no laws should liberate them from the penalties and forfeitures” which he chose, under these circumstances, to impose upon them; thus attempting to secure his own piratical in-

terests from the operation of the laws, by oaths of his own devising.

The schooner *Harriet* arrived here on the 20th of November last, under his charge, and is now detained (as the undersigned has been informed,) by virtue of some process emanating from this government, and her crew (with the exception of five who had been liberated by the governor on their agreement to enter his service,) were put on board the aforementioned British vessel, and sent, with captain Carew and some of his men, to Rio Janeiro.

Seven men, being a part of the crew of the *Superior*, had been left, previous to the capture, on Statenland, with provisions for six months; and, in consequence of the detention of that vessel, were exposed in that dreary and desolate region to the peril of dying from starvation, which would have been inevitable without accidental succour, inasmuch as captain Congar was restricted, in the agreement, to a direct voyage through the Straits of Magellan, to the west coast of South America, and a direct return to Port Louis, and was obligated to avoid all communication with the sealers, and no steps whatever were taken for their relief.

The governor, Mr. Lewis Vernet, has endeavored to seduce American seamen from their own flag, and to allure all who were so base as to renounce their country, into his service, by the promise of extravagant wages.

Wholly regardless of the common rights of humanity, he has arrested and imprisoned Isaac S. Waldron, George Lambert, John Jones and William Smyley, all citizens of the United States, a part of the crew of the schooner *Belville*, of Portland, in the state of Maine, commanded by captain Bray; which vessel was wrecked on the coast of *Tierra del Fuego*.

He also forcibly seized a large number of seal skins, and a large quantity of whalebone, then in their possession—sold the stores to the master of an English vessel, and transported the whalebone to Buenos Ayres, and then compelled these friendless, unfortunate, shipwrecked, imprisoned mariners, under threats of being sent to Buenos Ayres to be tried for their lives as pirates, to sign an agreement, in behalf of themselves and five shipmates who were then on *Eagle Island* occupied in building a shallop, in which they stipulated that the shallop, when completed, should be employed in the seal fishery on his account, and should wear the flag of this Republic.

Not satisfied with seizing their property and treating them as slaves, he would complete the measure of their humiliation by reducing these American citizens to a degree of moral debasement as low as his own, inasmuch as, in another article of this compulsory agreement, after binding them by a mockery of terms "to act in every respect in an honorable manner as becomes good men," he would have seduced them to the commission of acts of violence

and robbery on their own countrymen, by engaging to share with them the profits arising from the plunder of the vessels which they should capture!

In this mode he has compelled individuals belonging to the captured American vessels to engage in his service, and in some instances to assist in the capture of their own countrymen; and, in one instance, finding an American seaman, by the name of Crawford, refractory to his persuasions, heedless of his threats and unsubdued by imprisonment, he endeavored to force him into his service by depriving him of food—and this wretched seaman would have died of hunger, had not relief been administered secretly by Captain Davison in defiance of his orders.

The undersigned would also call the attention of his His Excellency the Minister of Foreign Affairs to certain declarations of Don Luis Vernet, important, as coming from a high functionary of this Government, the Military and Civic Governor of an extensive region; and if those declarations are to be considered as indicative of the sentiments and views of this Government, there would be just cause for apprehending that a project was in contemplation, involving the destruction of one of the most important and valuable national interests of the United States—the *Whale fishery*—for he declared to Captain Davison, that it was his determination to capture all American vessels, including *whaling-ships*, as well as those engaged in catching seals, upon the arrival of an armed schooner, for which he had contracted, which was to carry six guns and a complement of fifty men.

The undersigned would also call the attention of His Excellency the Minister to another declaration of the Governor, from which an inference is fairly to be deduced, that the citizens of the United States were to be selected as the special victims of his power; while the vessels and seamen of other nations were to be unmolested—inasmuch as, when he was told that the crew of the *Adeona*, a British vessel, had taken many seals on the Islands, and some even on the Volunteer Rocks, at the mouth of the Sound on which his Establishment was placed—his reply was, “that he could not take an *English* vessel with the same propriety that he could an *American*.”

It may sometimes happen that nations may mistake their rights, and may attempt to establish sovereign jurisdiction over unoccupied territories not clearly their own, and to which their title may be disputed,—and other nations, whose rights may be affected in consequence of such assumptions, are not necessarily obliged—perhaps, in the first instance—to regard acts enforcing such jurisdiction, as intrinsically and absolutely hostile, if their operation is equal and indiscriminate:—but, if the citizens or subjects of one nation, only, are subjected to penalties and punishments for violations of sovereign jurisdiction so assumed, while the subjects or citizens of other

nations, committing the same violations, are unmolested—such partial selection is evidence of hostile feeling, at least, in the officer to whom the authority to punish is delegated—and the Government which justifies an officer who thus favors and spares the one, and punishes the other, when both are *in pari delictu*, must be considered as avowing a preference, injurious and hostile to the nation which suffers.

The undersigned would also call the attention of His Excellency the Minister of Foreign Affairs to the period when the Governor began to capture American vessels and American citizens.—The Decree from which he pretends to derive his authority, bears the date of tenth of June, 1829, and it remained a dead letter, as to the North Americans, until the thirtieth day of July, 1831, more than two years from its date. It is a matter of public notoriety that the late Chargé d’Affaires of the United States near this Government, died in this city on the fourteenth day of June, 1831. When it was ascertained at the Falkland Islands that the American Representative was dead, this system of depredation on American property, and of outrage and violence on American citizens, was commenced. It seems evident to the undersigned, that the Governor was well convinced that such atrocities, if perpetrated previous to the death of the American Representative, must have roused him from his apathy, insensible, as he was, to the importance of this Decree, which has wrought so much mischief to his countrymen, and of which his Government, to this day, have not been officially informed.

The Governor must have known (for he has resided many years in the United States, and is well acquainted with their institutions and laws, and with the temper and disposition of the people) that no distance could smother the voice of just complaint, when uttered by American seamen: that it would have been heard, even from this remote region, by a Government never deaf to their entreaties for protection—never insensible to their wrongs and injuries—and that its echo would have traversed back the wide expanse of the ocean waters, which roll between the two hemispheres: he must have known that the American Representative here, would have been compelled to have told this Government these solemn truths—that the flag of the United States must be respected, whether floating beneath the constellations of the North or the South—that the wrongs of every American citizen must be redressed—and that certain vital national interests, amongst which is, the right of free fishery, can never be abandoned. Sensible of this, the Governor chose a time for the exercise of his power in acts of despotism, when no high diplomatic functionary was here to advocate and protect the interests and the rights of his countrymen—and remained unchecked and uncontrolled, until an American naval Commander was found, of sufficient energy and patriotism, to defend and protect those rights, on his own responsibility.

But had the Governor, in the exercise of his authority, confined himself merely to the capture of American vessels, and to the institution of processes before the regular tribunals which administer the laws in this country, with the sole view of ascertaining whether transgressions against the laws and the sovereignty of this Republic had, or had not, been committed, and had he so done in strict pursuance of his delegated authority—yet, in the view of the Government of the United States, even an exercise of authority thus limited, would have been an essential violation of their maritime rights; and the undersigned is instructed and authorized to say,—that they utterly deny the existence of any right in this Republic to interrupt, molest, detain or capture any vessels belonging to citizens of the United States of America, or any persons being citizens of those States, engaged in taking seals, or whales, or any species of fish or marine animals, in any of the waters, or on any of the shores or lands of any, or either, of the Falkland Islands, Terra del Fuego, Cape Horn, or any of the adjacent islands in the Atlantic Ocean.

In consequence of these repeated outrages on American property and American citizens, it has become the solemn and imperative, but unpleasant duty of the undersigned, as the Representative of the United States of America, to demand in their behalf, a restitution of all captured property belonging to citizens of the United States, now in the possession of this Government, or in the possession of Don Luis Vernet, claiming under its appointment to be the Military and Civic Governor of the Falkland Islands, Terra del Fuego and all the islands in the Atlantic Ocean adjacent Cape Horn—and ample indemnity for all other property of American citizens which has been seized, sold or destroyed by said Vernet, or persons acting under his orders; and full and ample immunity and reparation for all consequential injuries and damages arising therefrom, and full indemnity to all American citizens for personal wrongs—whether from detention, imprisonment, or personal indignities.

The undersigned would also call the attention of His Excellency the Minister of Foreign Affairs, to the case of the American Consul, whose functions have been suspended by this Government—not with a view to make any specific demand, because on this subject, he is not, as yet, specially instructed—but merely to suggest to His Excellency, that the Government of the United States, (in his opinion) if they do not view this act as absolutely hostile, (which he will not venture to affirm they do not,) yet they must consider it as evidence of unfriendly feelings. The undersigned can find nothing in the conduct of the Consul (so far as he understands it) which will justify this Government in taking a step so strong and decisive as that of his suspension. Presenting his exceptionable acts to the consideration of his own Government, would have been the more expedient and friendly mode to obtain redress; inasmuch as, that Government

have always respected the feelings of the people among whom their Consuls reside.

The undersigned would, with much respect, suggest for the consideration of His Excellency, the propriety of removing the obstacles which impede the exercise of the Consular functions of Mr. Slacum, until the views of the Government of the United States respecting this question, can be ascertained.

The undersigned takes this occasion to proffer to His Excellency the Minister of Foreign Affairs, the assurances of his high respect and consideration.

FRANCIS BAYLIES.

To His Excellency

Señor Dr. D. MANUEL VICENTE DE MAZA,

Minister of Grace and Justice,

Charged provisionally with the

Department of Foreign Affairs.



[No. XIX.]

[TRANSLATION.]

TO THE CHARGÉ D'AFFAIRES OF THE U. STATES OF AMERICA.

—
BUENOS-AYRES, June 25th, 1832.

THE undersigned, Minister of Grace and Justice, charged provisionally with the Department of Foreign Relations, has received and placed before His Excellency the Governor and Captain General of this Province, the note of the Chargé d'Affaires of the U. S. of America, dated the 20th inst., complaining of the proceedings of Mr. Louis Vernet in the Malvinas, and making statements, of a nature so serious and strange, that they require the most attentive consideration of the Supreme Authority of this country. To the end, therefore, of inquiring into the complaints which the Chargé d'Affaires prefers against the said Vernet, and prior to answering the several points comprised in his note, His Excellency has this day resolved that explanations be required from Mr. Louis Vernet, upon all and every one of those relative to his public conduct in the cases which rest upon his responsibility. On view of them, and after the Government shall have formed its opinion, as well from the facts which Mr. Vernet may set forth, as from those on which the Chargé d'Affaires grounds his claim, His Excellency will discharge his duty without attempting to impair the individual rights of the citizens of the U. S., who may prove to have been aggrieved or injured, and likewise without sacrificing to exorbitant pretensions the rights of Mr. Louis Vernet, nor the public ones, which by the common law of nations, belong to the Argentine Republic, as a sovereign and independent State.

The undersigned, on acquainting the Chargé d'Affaires of the U. S. with the measure adopted by His Excellency, has the honor to salute him with his most distinguished consideration and esteem.

MANUEL VICENTE DE MAZA.



[No. XX.]

(COPY.)

LEGATION OF THE UNITED STATES OF AMERICA, }
Buenos-Ayres, June 26th, 1832. }

THE undersigned Chargé d'Affaires from the United States of America, has the honor to acknowledge to his Excellency the Minister of Grace and Justice, charged provisionally with the Department of Foreign Affairs, the receipt of his note of yesterday, from which he learns that his communication of the 20th has been received.

He learns also with much pleasure that the communication above mentioned has been placed in the hands of His Excellency the Governor and Captain General of this Province, as he is well persuaded from the high character which His Excellency the Governor universally sustains for wisdom and justice, that, when satisfied of the existence of wrong, he will never withhold redress.

His Excellency the Minister says that the complaints which the undersigned as the organ of his Government has addressed to him are serious;—they are so, for they are preferred in behalf of American citizens to obtain redress for aggravated injuries. His Excellency also says that they are strange—as to this also, the undersigned has the honor to entertain a similar opinion, inasmuch, as nothing can be more strange to the Government and people of the United States than that outrages and violences should have been committed upon the persons and property of their citizens, in a time of profound peace, under the sanction of the Government of Buenos Ayres.

His Excellency has also been pleased to inform the undersigned that explanations would be asked of Don Luis Vernet: the undersigned will take the liberty to say that as to the substantive matter of the complaint no further explanations are necessary, inasmuch as Don Luis Vernet has admitted in the public newspapers of this city under his own signature that he has captured American vessels, which admissions cannot be unknown to His Excellency;—neither can it be unknown to him, that the schooner Harriet owned

by citizens of the United States and captured by the said Vernet is now detained in this Port by virtue of a process issued by some tribunal within the jurisdiction of this Government.

The aggravations with which these injuries on the persons and property of American citizens were accompanied, cannot affect the principle assumed by the Government of the United States, but are important only in ascertaining the measure and magnitude of those injuries—inasmuch as the Government of the United States not only deny any right in the said Vernet to capture and detain the property or the persons of their citizens engaged in fishing at the Falkland Islands, Terra del Fuego, Cape Horn or any of the adjacent islands in the Atlantic Ocean—but also any right or authority in the Government of Buenos Ayres so to do.

His Excellency has been pleased to say that “the public rights which, by the common law of nations belong to the Argentine Republic as a sovereign and independent State, he will not pretend to sacrifice:”—to this the undersigned can only say that the Government which he represents has neither the intention or the disposition to bring into question any of the *rights* of the Argentine Republic—but they wish to know *distinctly* from this Government whether they claim, on their part, any right or authority to detain or capture, or in any way to molest, interrupt, or impede the vessels or the citizens of the United States while engaged in fishing in the waters or on the shores of the Falkland Islands and the other places already mentioned.

The undersigned also takes the liberty to express to His Excellency the Minister the hope that this inquiry may be answered as speedily as his convenience will permit,—and he has the honor to assure him that he is with sentiments of exalted respect and high consideration

His obedient servant,

FRANCIS BAYLIES.

His Excellency

Señor Dr. Don MANUEL V. DE MAZA,

Minister of Grace and Justice,

Charged provisionally with the
Department of Foreign Affairs.



[No. XXI.]

(COPY.)

LEGATION OF THE UNITED STATES OF AMERICA, }
 Buenos-Ayres, July 10th, 1832. }

THE undersigned, Chargé d'Affaires from the U.S. of America near this Government, has the honor to inform His Excellency the Minister of Grace and Justice, charged provisionally with the Department of Foreign Affairs, that he has received no answer to the inquiry which he had the honor to submit to him, in his communication of the 26th ultimo, and which was of the following purport—that his Government wished to know, distinctly, from this Government, whether it claimed, on its part, any right or authority to detain or capture, or in any way to molest, interrupt or impede the vessels or the citizens of the United States of America, while engaged in fishing in the waters or on the shores of the Falkland Islands and the other places included in the decree of June 10th, 1829.

It appeared to the undersigned that no deliberation was necessary to enable the Government of this Republic to answer this plain question; and, therefore, he expressed the hope that the reply might be speedy. But, inasmuch as several days have elapsed since it was made, he must take it for granted that the inquiry was considered futile by His Excellency—as the fact inquired of was of common notoriety; inasmuch as, the rights claimed by the Argentine Republic had been asserted in the Decree of June 10th, 1829, and in the correspondence between D. Tomas Manuel de Anchorena, formerly Minister of Foreign Affairs, and George W. Slacum, Esqr., Consul of the United States,—that Minister having, in his communication to Mr. Slacum, of date December 3d, 1831, denied the right of the United States to the fisheries in question; while he asserted the rights claimed by this Republic to be “unquestionable,”—and also having, in a communication to the Consul subsequently made (viz. on the 9th of the same December) expressed the wish of his Government, that the Consul would refrain “from persisting in the protest which he had made against rights which had been, and were, in possession of this Government, and which (said the Minister) un-

til this time, nobody has questioned,"—and inasmuch as, in a proclamation issued by the Delegate Government on the 14th. of February last, the Falkland Islands are claimed as a "colony" of this Province,—and, in a circular issued by the same Delegate Government to the Provinces, Don Luis Vernet is styled the Political and Military Governor of the Falkland Islands, &c.,—and inasmuch as, this Government now detains the American schooner Harriet, captured by virtue of this assumed power.

The Decree of June 10th, 1829—the Proclamation of February 14th, 1832, and the Circular to the Provinces, and the process against the schooner Harriet, have never been communicated officially to the American Government or to their Representative here; and, although the same right was asserted, in behalf of this Government, by their Minister of Foreign Affairs, in the correspondence with Mr. Slacum, the American Consul; yet, as the Diplomatic character of that Gentleman was positively denied, and as he was subsequently suspended from his office by this Government—whatever was asserted in that correspondence, is not perhaps to be considered of a character as solemn as that of direct assertions of this right, made to an accredited Representative of the American Government here.

Therefore, the undersigned felt some solicitude to obtain an avowal of this claim, from a Minister of this Government, made distinctly to himself, as the accredited Representative of the United States.

But, as His Excellency has not, as yet, condescended to reply to the enquiry—the undersigned thinks himself justified in the presumption that the power and authority described in his application, are assumed by this Government. And, acting on this presumption, he will proceed to lay before His Excellency the views which his Government have taken of this question—and to present some facts, having relation to the question in issue, for the consideration of His Excellency, which he sincerely hopes may produce a happy termination of this unpleasant controversy.

To simplify the investigation upon which the undersigned proposes to enter, he will, in the commencement, take the liberty to state the question in this manner:—

✓ The Argentine Republic claims sovereignty and jurisdiction over the Falkland Islands, Tierra del Fuego, Cape Horn and the islands adjacent in the Atlantic Ocean, by virtue of having succeeded to the sovereign rights of Spain over those regions.

As these sovereign rights thus claimed are altogether derivative from Spain—the first enquiry naturally divides itself into two branches:—

1st. Had Spain any sovereign rights over the abovementioned places?

2d. Did the Argentine Republic succeed to those rights?

If it can be shewn that Spain had no such rights, the question is terminated; unless the Argentine Republic should abandon all title under Spain, and claim an absolute vested sovereignty, original in itself.

If it be shewn affirmatively, that Spain had such rights, then it must be as clearly shewn that the Argentine Republic succeeded to them; and if that can be shewn, then it must also be shewn that the Argentine Republic had authority to capture and detain American vessels and American citizens engaged in the fisheries at those places, without notifying the American Government or its Representative here, officially, of such assumptions and such claims.

It must be premised, that the United States of America claim no sovereign jurisdiction or exclusive privileges over the water or the soil of these regions. They only claim such privileges as they have been accustomed to exercise in common with other maritime nations.

Civilized nations have claimed title to countries uninhabited, or inhabited only by savage aboriginals, in three modes:—

1. By prior discovery.
2. By taking formal possession of such countries.
3. By prior occupation.

It has sometimes been contended that the first sight of countries never before seen by civilized and christian people, give to the nation by whose subjects such discovery was made, a preferable title; but it does not seem altogether reasonable that the discovery of a new region by ignorant marines, in consequence, perhaps, of a casual storm, or a trifling accident, should give to their nations a solid title to valuable territories. But, when skill and science are put in requisition, and expensive expeditions prepared for the purpose of discovery, it would seem just that discoveries consequent on such enterprises, should be followed by some benefits to the persons by whom they were made, and to the nations by whom they were patronized.

It has also been contended that no title can accrue from mere discovery, unless such discovery be accompanied by certain formal acts, which generally are styled acts of possession.

Formal possession of uninhabited and wild countries has generally been taken by naval officers, and has always been attended with many ceremonies and solemnities—amongst which are, landing in state, under salutes—raising flags—making inscriptions, and proclaiming formally that possession is taken in behalf of their sovereign or nation. If catholics, crosses are sometimes reared—and, sometimes, coins are buried.

Some nations have admitted rights in the savage aboriginals of such countries, and have claimed subsequently, on occupation, what may be called a pre-emptive right, that is, the right to extinguish

the aboriginal title by voluntary agreement, to the exclusion of all other nations.

Other nations have denied the existence of any right or title to territory amongst uncivilized tribes.

On this point, no question can arise when the regions claimed are uninhabited.

In the discussion which took place in the British Parliament with respect to the proceedings of the Spaniards at Nootka-Sound, Mr. Fox, who is justly ranked amongst the most illustrious of British Statesmen, denied that discovery furnished any ground of title whatever; and rested the British title to Nootka on occupation alone.

Prior occupation, according to the more liberal and rational usages of modern times, is certainly the least impeachable title to regions uninhabited, or inhabited only by savages.

The title founded on occupation may be strengthened, however, by the collateral circumstances of prior discovery and the formal act of taking possession, especially when there has been an occupation nearly simultaneous by two nations. A mere temporary occupation, without the intention of remaining, neither gives title, nor furnishes presumptive evidence of title:—there is scarcely a desolate island in this hemisphere, that has not had its temporary occupants; but the occupation must be such as to furnish strong presumptive evidence of an intention to abide—and the evidence of the intention can hardly be controverted, if the occupation be effected in pursuance of the orders of the constituted authorities of a nation, and if actual possession be taken by a military force.

Such being the general principles which the wisest statesmen have adopted, with respect to countries uninhabited, or inhabited only by savages; it is proper, for the elucidation of the questions which have arisen between the United States of America and the Argentine Republic, touching the Falkland Islands, Cape Horn, Tierra del Fuego and the adjacent islands in the Atlantic Ocean, to ascertain, from historical facts, how these principles will apply.

The undersigned does not pretend to say that Ferdinand Magellan, a subject of the King of Portugal, in the service of Charles V., Emperor of Germany and King of Spain, commenced the first voyage of circumnavigation on the 20th of September, 1519, about twenty seven years after the discovery of America by Columbus. Unfortunately, he did not live to complete it—having been killed at the Ladrones, in 1521. In October, 1520, he entered the Straits which divide Patagonia and Tierra del Fuego: he was, unquestionably, the first discoverer of the northern coast of the latter region. More fortunate than Columbus, he not only left an enduring name to the Strait which he traversed, but he has fixed it eternally in the celestial regions of the southern hemisphere.

In 1527, Groaça de Loaisa, a Knight of Malta, in the service of Spain, undertook, with a squadron of seven ships, to follow the route of Magellan, and actually passed the Straits; but all his vessels were lost on the voyage, and he, with the remnant of his followers, perished in the East Indies.

Sebastian Cabot and Americus Vesputius, names of note in American history, made abortive attempts to pursue the same route—and Simon de Alcazara, whose crew, having mutined before he reached the Straits, compelled him to return. But the failure of Cabot, a name equally to be venerated by North and South America, can scarcely be regretted; inasmuch as, it enabled him to complete the discovery of the fine country of the Rio de la Plata, and to explore, in several directions, those mighty waters, which flow through regions of matchless beauty and fertility.

These repeated failures, disheartened the Spaniards, and they gave over all attempts at discovery in this quarter, for many years.

On the 20th August, 1578, Sir Francis Drake, an Englishman, and the first naval Commander who circumnavigated the World, entered the Straits of Magellan and named an island, which he discovered there, Elizabeth, in honor of his Queen. After leaving the Straits, he was driven South by a succession of storms, as far as latitude 55°, where he discovered a cluster of islands, anchored and spent some days on shore. Leaving these islands, he was assailed by another violent storm, and was driven farther South, even beyond the 57th degree, “were (says the writer of his voyage) we beheld the extremities of the American coast, and the confluence of the Atlantic and Southern Oceans.” This was on the 28th of October, 1578.

From these notices it would appear that the northern coast of Tierra del Fuego was first discovered by Magellan, when in the service of Spain; and the South-western coast and some Islands in that direction by Sir Francis Drake, in the service of England—who probably discovered the southern extremity of the American Continent, now called Cape Horn.

So little was known of the southern and eastern coast of Tierra del Fuego as late as the year 1774, that Cook, the greatest of English navigators, while on his second voyage, when actually in sight of Cape Horn, could not ascertain whether it formed a part of that great island, or whether it was a part of a smaller detached island. Cook, however, by exploring the eastern and southern coasts of Tierra del Fuego, and laying down with mathematical and geographical accuracy, their several headlands, bays and harbors, deserves the credit of an original discoverer; as he unquestionably brought many things to light which was not known before.

The undersigned cannot discover from any evidence within his command, that any nation has ever taken formal possession of Tierra del Fuego or any of the islands adjacent—or attempted to

establish any settlements within their territories, or occupied them in any way. The savage aboriginals of those inhabited, have always remained without interruption or molestation ; and without having been required to yield even a nominal obedience or allegiance to any sovereign or nation whatever.

Although it is highly probable that Sir Francis Drake was the original discoverer of Cape Horn and the Island of which it forms the extremity—yet, that discovery has generally been assigned to Jacob Le Maire, a Dutchman, in the service of the States of Holland, who, in 1616, rediscovered that which Drake had discovered before, perhaps, and left the name of Hoorn (now corrupted to Horn) attached to the Cape, in honor of the town of that name in Holland. Le Maire was the first European navigator who, by finding a passage into the Pacific Ocean round this *terminus* of South America, thereby enabling navigators to avoid the difficult and dangerous passage through the Strait of Magellan, has almost rivalled De Gama, who converted the Cape of Storms into the Cape of Good Hope, when the way was opened to those magnificent oriental regions, which, for so long a period, have poured their riches into the lap of Europe.—It is immaterial, so far as respects rights resulting from original discovery, whether this Cape or the Island of which it is a part, was first seen by Sir Francis Drake, the Englishman, or Jacob Le Maire, the Dutchman—the honor of the discovery was never claimed by Spain :—the discovery was followed neither by possession or occupation, and the natives still retain undisputed dominion over this wintry and storm-beaten region.

To the Strait between Tierra del Fuego and Staten-land, Le Maire has attached his name ; but Statenland—still desolate and uninhabited—serves only to remind us of the ancient enterprise of ill-fated Holland.

It has been asserted, with confidence, that the first European who placed his eyes on the Falkland Islands, was *Davies*, an Englishman and an associate of *Cavendish*, in his voyage to the South Seas, in 1592, during the reign of Queen Elizabeth. Driven by storms within view of them, so imperfect was the discovery that he left not even the frail memory of a name.

In 1594, Sir Richard Hawkins, an English Admiral, in the service of Queen Elizabeth, saw these islands, and, in honor of his mistress and himself, called them Hawkins' Maiden-land.

In 1598, the States of Holland despatched a squadron to the South Seas under the command of Admiral Verhagen and Sebald de Wert. These islands were seen by the squadron and named Sebald Islands, under which appellation they appear in many ancient charts—and this, or a name so similar as to identify them, was retained until the year 1683 ; for William Dampier, a celebrated English seaman, in the fourth edition of the relation of his voyages, published in

London 1699, says that on the 28th of January, 1683, "we made the *Sibbel de Wards*, which are three islands lying in the latitude of 51d. 35m. South, and longitude West from the Lizard in England, by my account, 57d. 28m."—"These islands of *Sibbel de Wards* were so named by the Dutch." In the map prefixed to this edition of his voyages, these islands, which, from their position, must be the Falklands, are called *Sibbel de Wards*.

The name of Falkland, it is said, was first bestowed on these islands by an English navigator, Captain Strong, in 1689.

This name was subsequently adopted by all the English geographers and men of science, particularly by Dr. Halley. The journal of Strong yet exists, unprinted, in the British Museum.

Between the years 1700 and 1708, many French ships from St. Maloes, sailed into the South Seas. By some of them these islands were discovered and the French name of *Malouines* was attached to them—which name the Spaniards have adopted.

The French claimed the honor of having made the original discovery; but Frezier, a French author, whose relation of a voyage to the South Sea was published at Paris in 1716, admits that "*ces isles sont sans doute les mêmes que celles que le chevalier Richard Hawkins decouvrit en 1593,*" and his admission has been adopted by Malte-Brun, his countryman, the inimitable geographer of modern times.

There is not, on the part of Spain, the slightest pretence of having made the original discovery of these islands. Spain, indeed, does not pretend to have made it—but has adopted even the French name.

In the year 1764, a squadron was ordered to the South Seas by the King of Great Britain, George the III., which squadron was placed under the command of Commodore the Honorable John Byron, an illustrious name in the naval annals of Great Britain. What follows is extracted from his instructions, dated June 17th, 1764, "and whereas His Majesty's Islands, called Pepy's Island and Falkland Islands, lying within the said track," (i. e. the track between the Cape of Good Hope and the Straits of Magellan) "notwithstanding their having been first discovered and visited by British navigators, have never yet been so sufficiently surveyed as that an accurate judgment may be formed of their coasts and product, His Majesty, taking the premises into consideration, and conceiving no junction so proper for enterprises of this nature as a time of profound peace, which his kingdoms at present happily enjoy, has thought fit that it should now be undertaken."

On the 23d January, 1765, Commodore Byron went on shore at these Islands, with the Captains and principal officers of his squadron, "where the Union Jack being erected on a high staff and spread, the Commodore took possession of the harbor and all the neighboring islands for His Majesty King George III., his heirs

and successors, by the name of Falkland's Islands. When the colors were spread, a salute was fired from the ship."

Possession was thus taken, with all the usual formalities in the name of the King of Great Britain.

On the 8th of January, 1766, Captain MacBride arrived at Port Egmont with a military force—erected a block-house and stationed a garrison. No traces of former habitations, cultivation or people were perceived, but the English made some attempts to cultivate; and, as there was no native wood, several thousand young trees, with the mould about their roots, were transported from Port-Famine Bay, in one of the ships of Commodore Wallis' squadron, for the purpose of being re-set at the Falklands.

All this was done by the command of the King of Great Britain; and, as to all consequent rights, the occupation was complete.

It is true, that it is said that some Frenchmen had made a temporary establishment on one of the Falkland Islands, about this period; and that, in consequence of a remonstrance made by Spain, the King of France ceded all his right to those islands to His Catholic Majesty. If the doctrine assumed by Spain was correct, that France had not even a colourable title, the cession was a nullity; and it is a fact that Spain so regarded it, and relied on her prior rights, alone, in her subsequent controversy with Great Britain.

On the 10th of June, 1770, a large Spanish force, under the command of Admiral Madariaga, dispossessed the British of their establishment at Port Egmont, by force. The expedition by which this was achieved was put in motion by Buscarelli, the Vice Roy of Buenos Ayres.

At the time of the forcible dispossession, the title of Great Britain was, certainly, placed on very strong foundations: she had prior discovery, formal possession and actual occupation to urge; and there were no aboriginal rights to be extinguished.

The act of dispossession was disavowed by Spain and the territory restored by solemn convention: she, however reserved her prior rights. The reservation was a nullity; inasmuch as, she had no claim, either by prior discovery—prior possession—prior occupation, or even the shadow of a name.

The restoration of Port Egmont and the disavowal of the act by which she was temporarily dispossessed—after discussion, negotiation and solemn agreement—gave to the title of Great Britain more stability and strength; for it was a virtual acknowledgement, on the part of Spain, of its validity. Great Britain might then have occupied and settled all the islands, and fortified every harbor, without giving to Spain any just cause of umbrage.

With her rights again acknowledged—the emblems of sovereignty again reared—and possession resumed by a military and

naval force, Great Britain voluntarily abandoned these distant dominions—taking every possible precaution, when she so did, to give evidence to the World, that, though she abandoned, she did not relinquish them.

It is true, that many years have elapsed since, under these circumstances, she ceased to occupy the Falkland Islands. But the lapse of time cannot prevent her from resuming possession, if her own maxim of law be well founded—*nullum tempus occurrit regi*—and, that she persists in her claim, is evident, from the following Protest, communicated to the undersigned officially by His Excellency Henry S. Fox—now His Britannic Majesty's Minister Plenipotentiary and Envoy Extraordinary near this Government, and which is in the following words:—

“THE undersigned has the honor to inform H. E. the Minister of Foreign Affairs that he has communicated to his Court the official document published by the Government of Buenos Ayres on the 10th of June last, containing certain provisions for the Government of the Falkland Islands.

“The undersigned has received the order of his Court to represent to H. E. that the Argentine Republic, in issuing this decree, have assumed an authority incompatible with His Britannic Majesty's rights of sovereignty over the Falkland Islands.

“These rights, founded upon the original discovery and subsequent occupation of the said islands, acquired an additional sanction from the restoration, by His Catholic Majesty, of the British settlement, in the year 1771, which, in the preceeding year, had been attacked and occupied by a Spanish force, and which act of violence had led to much angry discussion between the Governments of the two countries.

“The withdrawal of His Majesty's forces from these islands, in the year 1774, cannot be considered as invalidating His Majesty's just rights. That measure took place in pursuance of a system of retrenchment, adopted at that time by His Britannic Majesty's Government; but the marks and signals of possession and property were left upon the islands: when the Governor took his departure, the British flag remained flying, and all those formalities were observed which indicated the rights of ownership, as well as an intention to resume the occupation of the territory, at a more convenient season.

“The undersigned, therefore, in execution of the instructions of his Court, formally protests, in the name of His Britannic Majesty, against the pretensions set up by the Government of Buenos Ayres, in their Decree of the 10th of June, and against all acts which have been, or may hereafter be done, to the prejudice of the just rights

of sovereignty which have heretofore been exercised by the Crown of Great Britain.”

“The undersigned, &c.—

(Signed) “WOODBINE PARISH.”

“BUENOS AYRES, November 19th, 1829.” [*]

Although His Excellency Don Tomas Manuel de Anchorena, formerly Minister of Foreign Affairs, has assented, in his communication to the American Consul, of date December 9th, 1831, that, until then, nobody had questioned the rights of this Government; yet, the Minister of Foreign Affairs must, certainly, have overlooked the Protest above-recited; for the undersigned has in his hands a copy of the official acknowledgement of its receipt, by His Excellency Don Tomas Guido, formerly Minister of Foreign Affairs; which copy has also been communicated to him officially by His Excellency the British Envoy.

After a dispassionate view of these historical facts, can it be contended that Spain, whose claim of title is restricted to the prior discovery of the northern coast of Tierra del Fuego—a discovery made more than three hundred years ago, followed neither by the formal acts of possession or actual occupation—who has always left that region of desolation as she found it, in the possession of its miserable aboriginals—could have had the slightest justification for attempting to exclude the citizens of the United States of America from the rights of free fisheries in all these Island-regions? Spain did not attempt it; and although she has captured hundreds of American vessels and an amount of property for which she afterwards remunerated the United States, by paying to their citizens the sum of Five Millions of Spanish dollars, it is not now recollected that a single whale-ship or sealing vessel, was amongst those captures.

[*] (*To this protest the following answer was returned.*)

BUENOS AYRES, November 25th, 1829.

THE undersigned, Minister of Foreign Relations, has received and placed before his Government, the communication which Woodbine Parish, Esqr., H. B. M. Chargé d’Affaires, has been pleased to address him, under date of the 19th inst., remonstrating against the decree issued on the 10th of June of the present year, whereby a Political and Military Commandant of Malvinas was appointed.

The Government intends to give an attentive consideration to the note of Mr. Parish, and the undersigned will be happy to communicate him its resolution, as soon as he shall receive orders so to do.

The undersigned has the honor to salute Mr. Parish with his highest esteem.

TOMAS GUIDO.

To H. B. M. Chargé d’ Affaires.

Can this Republic, then, claiming no original title or rights, but such, only, as are derivative, and which are derived altogether from Spain—assume any higher titles than those which Spain herself assumed?—and Spain, certainly, never assumed any right to capture or detain American vessels or American citizens engaged in the fisheries at the places above mentioned.

And to shew that Spain had excluded herself from exercising any high rights of sovereignty, by voluntary compact—the undersigned would call the attention of His Excellency to the sixth article of the Convention concluded between His Catholic Majesty and the King of Great Britain, at San Lorenzo el Real, October 28th, 1790, and ratified on the 22d of November following; and which is in the following words:—

“It is further agreed, also, that, as it respects the Eastern as well as the Western coasts of South America and the adjacent islands, that the respective subjects of the two Powers shall not form, in future, any settlements in any part of these coasts, situated to the South of the coasts and of the islands adjacent thereto, already occupied by Spain—it being well understood, that the respective subjects of the two nations shall have the power to land on the coasts and islands so situated, for the purpose of fishing, and to build cabins and other temporary works that may serve solely for these objects.”

The undersigned presumes that it will not be contended that any settlements then existed at any of the places included in the decree of the tenth of June, 1829; and, by this article, Spain and Great Britain both restricted themselves from forming any settlements there.

Can it be supposed that Spain, a nation jealous of her rights and sovereignty, and peculiarly sensitive on the subject of her South American dominions, would have virtually abandoned her sovereign rights over these wide regions, if she supposed her title to be well founded and free from doubt? There can be no dispute as to the real object of this treaty, which was, to leave an open fishery in these regions.

But, if it be hypothetically admitted that the full and entire right of sovereignty was possessed by Spain—has Spain renounced it? Has Spain ever, by any acknowledgement whatever, yielded the rights which she once possessed? Has Spain, as yet, relinquished, by any formal act or acknowledgement, any part of her claim to supreme dominion over these islands? If the rights of Spain are dormant, they are not extinct; and the undersigned has little doubt of her ability to maintain her actual rights (if any) over the Falkland Islands: for, although some of the brightest jewels have been torn from her crown, she is now a great and powerful nation; and, could her capacities be developed by free and liberal institutions, she would soon resume much of her ancient grandeur.

But again—If the rights of Spain to these islands were undoubted—and if, again, it be admitted hypothetically, that the ancient Vice Royalty of the Rio de la Plata, by virtue of the revolution of the 25th of May, 1810, has succeeded in full sovereignty to those rights; would that admission sustain the claim which the Province of Buenos Ayres or, in other words, the Argentine Republic, sets up to sovereignty and jurisdiction?

In May, 1810, a provisional Government was named at Buenos Ayres, who deposed the Spanish Vice-Roy and sent him to Spain. Against this proceeding, some of the interior provinces and the city of Montevideo protested.

Until the 9th day of July, 1816, Ferdinand VII. was acknowledged as King at Buenos Ayres, and all official acts were promulgated in his name. During this period, had he assumed the Government of the Falkland Islands, would his sovereign acts, orders or appointments have been issued, proclaimed or promulgated in his name and by his authority, as King of Spain and the Indies, or as King of Buenos Ayres or Rio de la Plata? Were not the proceedings of May, 1810, always received by the King as rebellious? In his estimation, was not this effort for liberty an insurrectionary movement; and did he not attempt to restore the ancient dominion of Spain over the entire Vice Royalty?

Is it not a truth that Paraguay, one of the Provinces of the ancient Vice Royalty, has even refused to be united to Buenos Ayres, and has always remained a separate and independent Government?

The ancient Vice Royalty of the Rio de la Plata is now divided between several distinct nations, having no dependency on each other—exercising all the powers of sovereignty within their own limits, uncontrolled—and, with respect to the Argentine Republic or the Province of Buenos Ayres, as entirely foreign and independent, as is the Republic of the United States of America. The undersigned, therefore asserts, that the Republic of Bolivia—the Province of Paraguay, and the Oriental Republic of the Uruguay, commonly styled the Banda Oriental—all included formerly in the Vice Royalty of the Rio de la Plata, have no political dependent connection with the Argentine Republic or the Province of Buenos Ayres.

If, then, the sovereign rights of Spain to those southern islands, descended to the ancient Vice Royalty of the Rio de la Plata, by virtue of the revolution—and if that Vice Royalty is now divided into several sovereignties, independent of each other; to which one of these several sovereignties shall these rights be assigned? Where are the title-deeds of the Argentine Republic? Where are the releases, of the other nations of the Vice Royalty, to that Republic?

But again—if it be admitted hypothetically that the Argentine Republic did succeed to the entire rights of Spain over these regions ; and that, when she succeeded, Spain was possessed of sovereign rights—the question is certainly worth examination, whether the right to exclude American vessels and American citizens from the fisheries there, is incident to such a succession to sovereignty.

The Ocean fishery is a natural right, which all nations may enjoy in common. Every interference with it by a foreign Power, is a national wrong. When it is carried on within the marine league of the coast which has been designated as the extent of national jurisdiction, reason seems to dictate a restriction, if, under pretext of carrying on the fishery, an evasion of the revenue laws of the country may reasonably be apprehended, or any other serious injury to the Sovereign of the coast, he has a right to prohibit it ; but, as such prohibition derogates from a natural right, the evil to be apprehended ought to be a real, not an imaginary one. No such evil can be apprehended on a desert and uninhabited coast ; therefore, such coasts form no exception to the common right of fishing in the seas adjoining them. All the reasoning on this subject applies to the large Bays of the Ocean, the entrance to which cannot be defended ; and this is the doctrine of Vattel, ch. 23, § 291, who expressly cites the Strait of Magellan, as an instance for the application of the rule.

As to the use of the shores, for purposes necessary to the fishery : that, depends on other principles. When the right of exclusive dominion is undisputed, the Sovereign may with propriety, forbid the use of them to any foreign nation, provided such use interferes with any that his subjects may make of them ; but where the shore is unsettled and deserted, and the use of it, of course, interferes with no right of the subjects of the Power to which it belongs, then it would be an infringement of the right to the common use of the shores as well as of the Ocean itself, which all nations enjoy, by the laws of Nature, and which is restricted only by the paramount right which the Sovereign of the soil has to its exclusive use, when the convenience or interest of his subjects require it ; or when he wishes to apply it to public purposes. It is true, that he is the judge of this interest, and of the necessity of using it for his public purposes—but justice requires, that were, no such pretension can be made, the shores, as well as the body of the Ocean ought to be left common to all.

These principles seem to have dictated the articles in the treaties between the United States and Great Britain. The third article of the Treaty of Peace of 1782, declares that the people of the United States shall *continue* to enjoy unmolested, the right to take fish on the Grand Banks, &c., and to dry and cure their fish in any of the *unsettled bays, harbors and creeks* of Nova Scotia, Magellan

Islands and Labrador, *so long as the same shall remain unsettled*; but that, when settlements are made there, they cannot enjoy the right, without a previous agreement with the inhabitants or possessors of the soil.

His Excellency will perceive, from the terms of this Treaty, that no rights of public sovereignty are claimed against the United States; but that the private rights of those who have settled and cultivated lands on the margin of the Ocean, are protected in such way as to secure their individual improvements from injury.

In the Treaty of Utrecht, too, France is allowed the use of the unsettled shores, for the purpose of drying fish, by certain metes and bounds.

The treaty concluded between Great Britain and Spain, in 1790, already alluded to, is to be viewed, in reference to this subject; because, both nations, by restricting themselves from forming settlements, evidently intended that the fishery should be left open, both in the waters and on the shores of these Islands, and perfectly free, so that no individual claim for damage, for the use of the shores, should ever arise. That case, however, could scarcely occur, for whales are invariably taken at sea, and generally without the marine league—and seals, on rocks and sandy beaches, incapable of cultivation. The stipulation in the treaty of 1790 is, clearly, founded on the right to use the unsettled shores for the purpose of fishery, and to secure its continuance.

When the unsettled shore, although under the nominal sovereignty of a civilized nation, is, in fact, possessed by independent, uncivilized tribes, the right to exclude other nations from the use of the shores, is on a much less stable footing.

This is the case with all the continent of South America, to its extremity from the Rio Negro in lat. 41°, and also with Tierra del Fuego and some of the adjacent islands. On the Pacific side, the Araucanians; and on the Atlantic, the Puelches, Patagonians and other tribes are perfectly independent. To the common use of these shores, therefore, there can be no reasonable objection.

The following conclusions, from the premises laid down, are inevitable:—

1. That the right of the United States to the Ocean fishery, and in the bays, arms of the sea, gulfs and other inlets capable of being fortified, is perfect and entire.

2. That the right on the Ocean within a marine league of the shore, where the approach cannot be injurious to the Sovereign of the country—as it cannot be on uninhabited regions, or such as are occupied altogether by savages—is equally perfect.

3. That the shores of such regions can be used as freely as the waters: a right arising from the same principle.

4. That a constant and uninterrupted use of the shores for the purposes of a fishery, would give the right, perfect and entire; although settlements on such shores should be subsequently formed or established.

That the citizens of the United States have enjoyed the rights of free fishery in these regions, unmolested, is a fact which cannot be controverted. While they were yet subjects of Great Britain, it was of such notoriety that it attracted the attention of an illustrious British statesman and orator, whose splendid panegyric, in the House of Commons, upon the maritime enterprise of the New-Englanders, will never be forgotten. "Pass by the other parts (said the orator) and look at the manner in which the people of New-England have, of late, carried on the whale-fishery. While we follow them among the tumbling mountains of ice, and behold them penetrating into the deepest frozen recesses of Hudson's Bay and Davis' Straits; whilst we are looking for them in the Arctic Circle; we hear that they have pierced into the opposite region of polar cold,—that they are at the Antipodes and engaged under the frozen Serpent of the South. Falkland Islands, which seemed to remote and romantic an object for the grasp of national ambition, is but a stage and resting place in the progress of their victorious industry," &c.

It is of equal notoriety that from the period of the acknowledgement of their independence by Great Britain, they have been in the unmolested enjoyment of the whale and seal fishery in and about these islands: that these fisheries, with the full knowledge of Spain, have been prosecuted by them to an extent far exceeding the fisheries of any and all other nations. If long and uninterrupted use and possession can impart any right to fisheries of the above description—the title of the United States is unimpeachable. And Vattel, Book I., chap. xxiii., § 287, although he admits the right of nations owning the coasts to appropriate to themselves certain fisheries on their coasts—expressly excludes them under certain circumstances. "But if (says this writer) so far from taking possession of it, the nation has once acknowledged the common right of other nations to come and fish there, it can no longer exclude them from it. It has left that fishery in its primitive freedom, at least with respect to those who have been accustomed to take advantage of it. The English not having originally taken exclusive possession of the herring fishery on their coasts, it has become common to them with other nations." The acknowledgement spoken of, may be express or implied: a long continued use without interruption, is a virtual acknowledgement of the right to use; and in the instance cited (the herring fishery on the English coast) there has been no formal acknowledgement, on the part of England,

that other nations have a right to use that fishery : from the acquiescence of England, the acknowledgement is inferred.

Again—If it be admitted, hypothetically, that the rights of sovereign jurisdiction were vested in the Argentine Republic, by virtue of the revolution of May, 1810, and that the right to exclude all nations from the fisheries of the Falklands and other islands mentioned in the decree of June 10th, 1829, was undoubtedly consequent to sovereign jurisdiction thus acquired ; yet, some preliminary acts remained to be performed, before the capture and detention of the persons or property of citizens of the United States of America engaged in the fisheries, can be justified.

If regions, never occupied or brought under any positive jurisdiction—without garrisons, or naval forces, or inhabitants—are to be occupied and brought under civil or military rule, and those who have enjoyed the privilege of a free fishery there, are to be excluded from that privilege, it is incumbent on the nation assuming such powers, to give official notice to the resident representatives, or to the Governments, of all nations with whom relations of amity are maintained, before any acts of violence, in assertion of such sovereign rights, can be justified. A warning to individuals is not enough—for that is not a general notice ; and individuals not warned, may incur forfeitures and penalties, without any knowledge of their liabilities ; and their Governments, equally ignorant, could take no preventive measures for their security.

In the archives of the American Legation here, and of the Department of State at Washington, there is not the slightest trace of any official notice of the decree of June 10th, 1829.

The undersigned takes the liberty to say, that, on principles of common justice (and on such principles are the laws of nations based) a right enjoyed for more than half a century—even if it was enjoyed by tacit permission, only—ought not to be denied or withdrawn without notice : and, surely, no penalty can be enforced, with justice, in such cases—unless the system of *ex post facto* laws and decrees is to be revived, in an age which boasts of its enlightened liberality and justice. Therefore, even on the supposition that the rights of the Argentine Republic are indisputable—yet, the seizure of American vessels is a just cause of complaint, and the Government of the United States have a right to demand restoration and indemnity.

These remarks, touching the original rights of Spain and the derivative rights of the Argentine Republic : the rights of free fishery, and the propriety of notice, when dormant and unclaimed rights are asserted and resumed, are offered for the consideration of His Excellency.

The undersigned is well aware that the pending question involves important principles ; and, although he may be satisfied as to the

extent and character of the rights of the United States and the Argentine Republic, yet he freely admits that every nation must decide, for herself, on all questions touching her dignity and her sovereignty.

If the Argentine Republic can shew conclusively that Spain was possessed of rights over the Falkland Islands, Tierra del Fuego, Cape Horn and the islands adjacent in the Atlantic Ocean, of such a high and sovereign character as to justify the exclusion of the citizens of the United States of America from the fisheries there; if this Republic can shew that Spain has relinquished, renounced, or in any way lost her sovereign rights to the regions above mentioned, and that such sovereignty has become absolutely vested in herself; and if she can further shew that having acquired such rights, and being about to exercise them, by inflicting penalties and forfeitures upon the persons and property of the citizens of a friendly nation, for exercising privileges which they had been long accustomed to use—she is justified in withholding all official notice of the acquisition of such rights, and of her intention so to exercise them, from the Government or the resident Representative of such nation—then, although the American Government might have some reason to complain of unceremonious and unfriendly treatment, there might, perhaps, have been no cause of complaint on the ground of a violation of positive rights.

These questions in controversy between the two Republics involve principles which, in their applicability to the national rights of the United States, extend far beyond these regions; and affect, in a most serious manner, their most important and vital interests.

It is the cause of deep regret to the people of those States, that circumstances should have compelled them to contend for these principles with a people for whom they have ever cherished the most amicable sentiments—whose independence was recognized by them at an early period of their national existence; and the undersigned takes the liberty to say, that this recognition was not occasioned by any anticipations of the advantages of a free commercial intercourse—but from sympathies, excited to enthusiasm, for a gallant people, who had won their freedom by their prowess and valor. Ere that recognition had passed through the forms of legislation, it was a law in the hearts of the American people.

The undersigned takes this occasion to inform His Excellency that he is instructed to say, “that the President of the United States is fully sensible of the difficult situation in which the internal troubles of this Republic have placed its Government, and that he does not attribute to any unfriendly disposition, acts, that, in ordinary times, might wear such an aspect; but he expects from the similarity of the Republican forms of the Governments of both nations—and from a recollection of the early recognition of the

“ independence of this Republic by the Government of the United States, and their uniformly amicable disposition since, that, on consideration of their complaints, full justice will be done to the citizens of the United States, and that measures will be taken to meet the disposition he feels for a strict commercial union, on principles of perfect reciprocity.”

If the preliminary difficulties can be removed—the undersigned has the pleasure to inform His Excellency that he is invested with full powers to conclude a Commercial Treaty with this Republic, on fair and reciprocal terms.

The undersigned takes occasion to present to His Excellency the assurance of his high respect and consideration.

FRANCIS BAYLIES.

His Excellency

Señor Dr. DON MANUEL V. DE MAZA.

Minister of Grace and Justice,

Charged provisionally with the

Department of Foreign Affairs.



[No. XXII.]

[TRANSLATION.]

TO THE CHARGE D'AFFAIRES OF THE UNITED STATES OF AMERICA.

BUENOS-AYRES, July 10th, 1832.

WHEN the undersigned, Minister of Grace and Justice, charged provisionally with the Department of Foreign Relations, acknowledged to the Chargé d'Affaires of the U. S., the receipt of his note dated the 20th ultimo, he expressed to him at the same time, that both with respect to the charges contained therein against Mr. Louis Vernet, and to the other points to which it referred, His Excellency the Governor would discharge his duty in a just and legal manner. Therefore when the Government shall reply to the Chargé d'Affaires, on those subjects, it may then make the declaration which it may deem proper in behalf of its rights, without prejudice to those of any foreign, friendly or neutral nations, or any of their subjects. In the mean time, the undersigned hopes that whatever may be the ideas which the Chargé d'Affaires of the U. S. entertains, respecting the conduct of Mr. Louis Vernet at the Malvinas, and the extent of the rights of the Argentine Republic, he will be aware that His Excellency the Governor cannot conscientiously form his opinion as to the nature of the facts from isolated assertions, however respectable the party by whom they are advanced; and that he will much less judge it prudent to separate questions intimately connected, in order to anticipate an answer as the Chargé d'Affaires appears to desire in his note of the 26th ult. The undersigned, serving as a faithful organ to the wishes of His Excellency the Governor of this Province, cannot but assure the Chargé d'Affaires, that His Excellency being resolved not to swerve from the principles of strict justice, which the patriotic and enlightened people of the U. S. will know how to appreciate, will conduct himself always with that prudence and circumspection, which duty prescribes, in order in no instance to risk the correctness of his decisions.

The undersigned salutes the Chargé d'Affaires of the U. S. with his highest consideration.

MANUEL VICENTE DE MAZA.



[No. XXIII.]

(COPY.)

LEGATION OF THE UNITED STATES OF AMERICA, }
Buenos-Ayres, July 11th, 1832. }

THE undersigned, Chargé d'Affaires from the United States of America near the Government of Buenos Ayres, has the honor to acknowledge the receipt of the communication from His Excellency the Minister of Grace and Justice, charged provisionally with the Department of Foreign Affairs, of yesterday's date.

Although under no obligation of courtesy so to do,—yet, before the reception of the last communication from His Excellency, the undersigned had prepared another communication for his consideration; and had entertained the hope, that its contents when well considered, might lead to the adjustment of an unpleasant controversy, on terms equally honorable to the Argentine Republic and the United States of America.

As the object of the undersigned is to make known, with perfect frankness, the views of his own Government—and as he hopes to be met with a corresponding spirit by this Government; although the enquiry which he had the honor to make, in his communication of the 26th ultimo is not yet answered—yet, he now transmits the communication which he had determined to place in His Excellency's hands yesterday; and he takes the liberty to express the wish that the final determination of the Government of the Argentine Republic may be communicated to him as speedily as the convenience of H. E. will permit.

The undersigned prays H. E. to accept the assurance of his high respect and consideration.

FRANCIS BAYLIES.

To His Excellency

Señor Dr. D. MANUEL VICENTE DE MAZA,
Minister of Grace and Justice,
Charged provisionally with the
Department of Foreign Affairs.



[No. XXIV.]

(COPY.)

LEGATION OF THE UNITED STATES OF AMERICA, }
Buenos-Ayres, August 6th, 1832. }

THE undersigned, Chargé d'Affaires from the United States of America near the Government of the Argentine Republic, takes the liberty to remind H. E. the Minister of Grace and Justice, charged provisionally with the Department of Foreign Affairs, that, in a communication which he had the honor to submit to him, of date June 20th—after a recapitulation of the outrages which had been committed by the Military and Civic Governor of the Falkland Islands and other territories embraced in the Decree of June 10th, 1829, on the persons and property of citizens of the United States of America—he informed H. E. that he was authorized and instructed by his Government to say, “that they utterly denied the existence of any right in this Republic to interrupt, molest, detain or capture any vessels belonging to citizens of the United States, engaged in taking seals, or whales, or any species of fish or marine animals, in any of the waters, or on any of the shores or lands, of any, or either, of the Falkland Islands, Tierra del Fuego, Cape Horn or any of the adjacent islands in the Atlantic Ocean.”

The undersigned also takes the liberty to represent—that, in another communication, of June 26th, he had also the honor to submit, on the part of his Government, an inquiry in simple and plain terms, “wishing to know, distinctly, from the Government, whether it claimed, on its part, any right or authority to detain or capture, or in any way to molest, interrupt or impede the vessels or the citizens of the United States, while engaged in fishing in the waters, or on the shores, of the Falkland Islands and the other places already mentioned ”

This enquiry not being answered, the undersigned, in another communication, of date July 10th, assumed the fact that the Argentine Republic did claim the right to exclude American citizens from the fisheries of all the shores and seas included within the limits of the civil and military Government of Don Luis Vernet; and, al-

though it was incumbent on this Government to take the affirmative and prove their rights—inasmuch as force had been used in the assertion of those rights—yet, to convince this Government of the amicable disposition of the Government of the United States, and that the latter rested their rights on principles from which they could not swerve—he waves all technical advantages and undertook to prove, that the Argentine Republic had not the rights which were claimed, and submitted for the consideration of His Excellency, an argument founded on the principles of international law and on historical facts.

If the undersigned has been so unfortunate as to fail to convince His Excellency the Provisional Minister of Foreign Affairs and the Government whose organ he is, that the Argentine Republic has not the rights which are claimed—he wishes to know it as speedily as the convenience of His Excellency will permit; and if it is inconvenient for His Excellency to reply at length to the several points which were made in his communication of July 10th—yet it will be satisfactory in some respects (although unpleasant in others) to receive from His Excellency, as the organ of his Government, a formal and official assertion of this right to exclude American citizens from the use of these fisheries, in terms as brief as His Excellency shall choose to make them.

If, on the other hand, the undersigned should be so fortunate as to find that his own opinions are in accordance with His Excellency's, and with those of the Government of the Argentine Republic, touching these rights of fishery—it would be satisfactory to him to know it.

The undersigned takes this occasion to proffer to His Excellency the assurance of his high respect and consideration.

FRANCIS BAYLIES,

His Excellency

Dr. DON MANUEL V. DE MAZA,

Minister of Grace and Justice,

Charged provisionally with the

Department of Foreign Affairs.



[No. XXV.]

(TRANSLATION.)

TO HIS EXCELLENCY THE SECRETARY OF STATE OF
THE UNITED STATES OF NORTH AMERICA.

BUENOS AYRES, August 8th, 1832.

THE undersigned, Minister of Grace and Justice, charged provisionally with the Department of Foreign Affairs of the Argentine Republic, has received orders from his Government to address the Secretary of State of the U. S. of North America and manifest to him frankly and candidly, that from the time that as a political step of paramount importance to the interest of both countries, it resolved to suspend all official communication with Mr. George Washington Slacum, Consul of that Republic in this capital, His Excellency the Governor deemed it his duty to make known to H. E. the President of the United States, the motives which prompted that resolution. But the Ministers who had first intervened in the affair with Mr. Slacum having retired from office, and the duties of the Department having subsequently devolved on other members of the Administration, delay in the intended communication became inevitable.

The Government of Buenos Ayres subsequently prepared to fulfill this duty when by the last Message of His Excellency the President of the United States under date of the 6th December last on the opening of Congress, received here on the 14th of February of the present year, it learned that a Minister from the U. S. was about to leave for the purpose of "enquiring into the nature of the occurrences at the Malvinas." His Excellency the Governor then resolved to await the arrival of that Minister, confident that as soon as he should be enabled to judge from correct statements, of what had happened and transmit to his Government the faithful result of his observations, the coolness of the conduct of the Buenos Ayres Government in its proceedings with Mr. Slacum would not be misconstrued by the Cabinet of Washington, into a feeling unworthy of the Authorities of this country.

The march of the Government had been so just and circumspect and so imperious the necessity of refusing to Mr. Slacum his *accessit*,

that it was desirous the whole affair should be closely examined into on the spot in order to avoid that change of aspect it might otherwise be liable to at a distance, the which would tend to diminish the sympathy which H. E. might otherwise expect from the wisdom and integrity of the Government of the United States.

But the opinions of Mr. Baylies, Chargé d'Affaires of the U. S., in his first note rendered the hope remote, that he would admit the vindication of the Argentine Government to take precedence of the interest of a person, to whom he appeared to have already listened with predilection and whose restitution to the exercise of his Consular office, he did not hesitate to demand five days after he entered on his Diplomatic functions, apparently without having reflected on the danger attendant on precipitate and unmediated demands. This being the case it had become absolutely necessary for this Government to communicate directly with the Secretary of State of the U. S., in order to place the facts before him in their true light.

As it will appear by the copies No. 1 to 9, herewith transmitted, Mr. Slacum, immediately on his becoming informed of the arrival of the American schooner Harriet at this Port from the Malvinas, initiated before this Government an irregular question and proposed to maintain the same on incorrect and indiscreet principles. The Harriet with two other schooners, the Breakwater and the Superior, had been detained by the Political and Military Commandant of the said Islands for having persisted in their fishery, notwithstanding that since the year 1829 they had been formally notified that their vessels and cargoes would be confiscated if they continued to fish on the coasts which were under the dominion of the Republic and had been colonized under the protection of the Argentine Government. The Harriet was brought to this Port not only for having infringed the public prohibition against fishing within the jurisdiction of the Malvinas, but moreover by virtue of an express and solemn agreement entered into between the Commandant of the Islands and Captain Davison, by which the latter bound himself to come and answer before the Government of Buenos Ayres both for himself and as Representative of Captain Conger of the schooner Superior, in the trial which should ensue, with regard to the seizure of their vessels and cargoes. The affair would necessarily be argued before the Tribunals of this country, and no one without the most flagrant injustice could presume that an illegal decision would be given; or, that Captain Davison or whoever else might be similarly situated would be deprived of any means of defence, that might be adequate to the protection of their rights and interests. But, Mr. Slacum, feigning to be ignorant of the principles on which this Government took upon itself to detain Captain Davison, an American citizen,—considered the act as calculated to disturb the

friendship and good understanding existing with the United States.

The Government of Buenos Ayres had the strongest reasons for considering this step as preliminary to others, which might place it in the necessity of refusing every kind of interference on the part of Mr. Slacum, in the questions relating to the Malvinas. But for the present it limited itself solely to replying to him that the case of the Harriet was in a course of judicial procedure, and that it would be decided in conformity with the laws of the country. After such a declaration which involved a national responsibility as to the result of the trial thus initiated, with respect to the case of the Harriet; and since that on the one side the parties interested were secured from the damages, costs and prejudices that might arise thereon, and on the other there existed the express deed of agreement, which will be found in paper No. 11; it was not to be expected that Mr. Slacum would persist tenaciously in his interference.

But far from terminating here an affair which, from its nature, involved other questions of a higher order, the discussion of which solely belonged to the two Governments or at least to functionaries of a more elevated class than a mere Consul, Mr. Slacum went so far as not only to deny *in toto* that any right either has existed or does exist in the Republic to detain American vessels engaged in the fishery of seals on the Malvinas, and the islands and coasts adjacent to Cape Horn; but furthermore to protest formally against all the measures that in virtue of such right had been adopted including the Decree published under date of the 10th June, 1829, by which the property in the islands and fisheries, was asserted and an administrative authority established in the name of the Republic, —that is to say, “denying the sovereignty which the Argentine Republic exercises over these islands.”

It is not necessary to comment on the terms of this Protest in order to estimate its importance. Many years had elapsed since that, under the very eye of a Chargé d’Affaires of the United States, the colony in the Malvinas was founded by order of the Argentine Government. The commission granted on the 10th of June, 1829, in favor of Don Luis Vernet, appointing him Military and Political Commandant of the said Islands with competent authority and jurisdiction, was published in the newspapers of this capital—when neither Mr. Forbes thought proper to make the slightest objection thereto; nor was any other individual of the United States hardy enough to call in question the right of the Republic to dispose, as it might deem proper, of a territory belonging to the Argentine State, *such as it had been acknowledged to be without contradiction by the Government of Washington itself.*

But, on what grounds could Mr. Slacum call this right a question? Could he be ignorant that the Malvina Islands, coasts of

Patagonia and its adjacencies unto Cape Horn were comprehended in the territorial delineation of the Kings of Spain as constituting an integral part of the former Vice Royalty of Buenos Ayres, since erected into a nation by the will and efforts of its sons? Could Mr. Slacum doubt that the right acquired by the Court of Spain, to what it had discovered, conquered, possessed and occupied as well on the continent as in the islands adjacent to the aforesaid Vice Royalty, has descended as a fundamental right to the Argentines, from the instant they asserted their nationality and independence and formed themselves into a Republic; in the same manner that the right to these territories which had been discovered, conquered, possessed and occupied by England in North America, descended to its sons with jurisdictional authority which the United States duly appropriated to themselves? If Mr. Slacum has wished to deny the right of Spain to the sovereignty of the Malvinas and the islands adjacent, has he forgotten that as often as they have been occupied by English or French colonists—so often have they again been given up, in virtue of remonstrances from the Court of Spain; and that although the fishery and traffic of these islands was formerly an object of serious controversy—Spain, nevertheless, was at all times firm in her resistance, which was at length acquiesced in, from a just respect to the sovereignty which she exercised over them? Without adducing for the present those reasons, which in proper time will completely elucidate this question, it sufficed that the Government of Buenos Ayres had the power to impose or remove the restrictions which of right appertain to her to adopt, as to the fishery of amphibious animals in the Malvinas; it was sufficient that the detention of the *Harriet* and the other two schooners alluded to, could be conciliated with the common law of nations, to shew, that the Protest of Mr. Slacum was as extravagant as it was foreign to his Consular functions. Nevertheless, the Government limited itself to signifying to Mr. Slacum, that the legal investigation which was in process in the case of the *Harriet* was only intended to place it in possession of the truth, in order to decide as justice might prescribe; and that it could not acknowledge that he in his Consular character had authority to enter such Protest.

Thus far had the Ministerial correspondence been carried on, when Mr. Slacum transmitted to the Department of Foreign Affairs the letter of Mr. Duncan, Commander of the United States Ship *Lexington*, announcing his intention to sail for the Malvinas, with the force under his command, for the purpose of protecting the citizens and commerce of the United States in the fishery in question; disguising under apparent candor the perfidious machinations which were in concertation. Mr. Slacum's note was dated the 3d of December,—and by another under date of the 6th, he stated that Captain Duncan would delay his departure, solely, until the morn-

ing of the 9th, in the hope that, in the mean time, he might receive intelligence of the orders of this Government to leave unrestricted the right of free fishery to the North Americans; to restore to the owners or agents of the schooner Harriet the vessel and cargo; and, at the same time, to withdraw from the Military and Civil Commandant of the Malvinas all powers of interference in the traffic in which the citizens of the United States were engaged on the coasts thereof.

It now became easy to discover through the veil which disguised these demands, the strict connivance which existed between the Commander of the Lexington and Mr. Slacum, and that the latter, regardless of the unassuming pretensions of the Ministry, endeavored to give a dark coloring to the faithful picture which Commandant Vernet had portrayed in the publications made by him, relative to every thing connected with the detention of the schooners in Malvinas. But the Government, firm in its resolution not to depart from a benevolent and equitable line of conduct, notified Mr. Slacum, on the 9th of the same month, that Mr. Gilbert Davison of the Harriet, who had embarked on board the American corvette Lexington, ought not to absent himself without leaving some proper person empowered to represent him; and urged him at the same time to make it known to the party interested, as in the case either of his refusal or omission to do so, he would subject himself to all the damages, costs and prejudices consequent thereon. The Government took advantage of the opportunity thus offered it, to advise Mr. Slacum, that although it did not acknowledge the authority which he wished to arrogate to himself since the death of Mr. Forbes, yet it could not do otherwise than make him sensible of the surprise it felt that he should have desired to circumscribe to the precise time fixed for the departure of the Lexington, the decision of a private litigated affair, in which, in the exercise of his Consular functions, he could have no interference; and which, having to be tried and decided on in conformity with the laws of the country, demanded a serious and lengthened consideration, in order to avoid committing any act of injustice. Above all, Mr. Slacum was informed that any proceeding that might have a tendency to disavow the right of the Argentine Republic to the Malvinas and other islands and coasts adjacent to Cape Horn, would give rise to a formal remonstrance which the Government would make to that of the United States, under the firm conviction that it would meet with just attention.

Neither the repeated incivilities of Mr. Slacum—his continued transgression of the limits of his Consular duty, in endeavoring to turn the natural course of the affair of the Malvinas, already subject to legal-procedure; nor finally the known circumstance of his mercantile connexion, so foreign to the duty of a Public Func-

tionary, who nevertheless took part in these questions, could induce the Government to depart from the position it had taken in order to give His Excellency the President of the U. S. an incontestible proof of the coolness and moderation by which the Administration of the Republic was regulated. Nevertheless, after all these unpleasant occurrences, it preserved towards Mr. Slacum the same immunities and acts of courtesy which it had paid to any other Consul resident in this capital; because the wisdom, probity and circumspection of the Cabinet of Washington presented a pledge of confidence by far too respectable for it to doubt that in its judgment it would incline itself in favor of the rights and dignity of the Argentine Government, whose friendly disposition ought never to be doubted either by the Government or the people of North America. Thus elapsed more than two months, when the Government of Buenos Ayres was surprised by the receipt of the unexpected news of the attack made by the Ship-of-war Lexington on the colony established in Malvinas, on the Island of Soledad,—which was effected, without any resistance, on the 31st December last, by her Commander, Duncan, who spiked the artillery, fired the magazine, disposed of the public and private property, and carried on board, in arrest, the person entrusted with the preservation of the colonial fishery—loaded with irons six citizens of the Republic, and atrociously destroyed the fruits of many years' honest industry—vulnerating at the same time the rights and respect due to a friendly nation. This outrage, in the execution of which Mr. Duncan spared no means to render it as humiliating and scandalous as possible, in the eyes of the world, awakened a just resentment in a people jealous of their prerogatives—who were conscious of not having offended—and who, since their emancipation from Spain, had never omitted one single act of benevolence or generous hospitality towards the citizens of the United States. It moreover compromised the highest duties of the Government, obliging it to coincide with the public opinion which designated Mr. Slacum, if not as the active coadjutor of this unheard of transgression, at least as the blind tool of a misguided opinion, and whose example probably had stimulated Captain Duncan to perpetrate this shameful assault upon a peaceable settlement, subject to the authority and the laws of the Argentine Republic.

From the moment this opinion with regard to Mr. Slacum became a national feeling—from the moment the Government was obliged to look upon him with displeasure and suspicion, he could no longer be a proper organ to promote the interests of his country; he could no longer be admitted in his public character without wounding the dignity of the Argentine Republic, nor without acting in opposition to the opinion of its citizens, and consequently

diminishing that confidence which it is the duty of the authorities to inspire.

Acting upon this principle, on the 14th of February, it notified to Mr. Slacum the suspension of all official communication with him—inviting him to nominate some person duly qualifi'd to exercise his Consular functions, as will appear by the authorized copy No. 12,—and at the same time garantying the persons and property of the North Americans with every security in the power of a civilized and humane Government.

From the candid exposition the undersigned has thus made, by order of his Government, to H. E. the Secretary of State of the U. S., of the course the Ministerial correspondence with Mr. Slacum had taken, and the causes which have influenced the conduct of the Government, the undersigned is persuaded—

1. That in the mind of H. E. the President of the United States, the motives for delaying this communication, will be deemed justifiable.

2. That during the progress of this disagreeable controversy, the Government has omitted no effort to bring the question to a legal issue.

3. That the refusal to hold further communication with Mr. Slacum was not only a consequence strictly allied to the dignity of the first authority in the country, but likewise that H. E. in making use of the rights inherent to his office and in all respects conformable with the customs of other nations, has left nothing undone in order to secure the interests of the Americans.

The undersigned, in renewing on this occasion the sincere wishes of his government to maintain inviolate the friendship and good understanding between the United States and the Argentine Republic, permits himself to join his own to this National feeling, and salutes H. E. the Minister with his most distinguished consideration.

MANUEL VICENTE DE MAZA.



[No. XXVI.]

[TRANSLATION.]

TO FRANCIS BAYLIES, Esq., CHARGE D'AFFAIRES OF
THE UNITED STATES OF NORTH AMERICA.

—
BUENOS AYRES, August 14th, 1832.

THE undersigned Minister of Grace and Justice, charged provisionally with the Department of Foreign Relations of the Argentine Republic, has the honor to state, that Mr. Louis Vernet, Political and Military Commandant of the Malvina Islands, having returned the report which the Government had required from him, (an authorised copy whereof is herewith transmitted,) relative to certain charges and complaints which the Charge d'Affaires of the U. S. adduced in his first note dated in this city the 20th of June last, His Excellency the Governor of this Province has taken into consideration as well the before-mentioned note as the four subsequent ones under dates of 26th of the same month of June, 10th and 11th of July and 6th of the present month of August, which His Honor has been pleased to address to the undersigned.

Having scrupulously examined and meditated on the contents of the before-mentioned notes, he observes that in the first the Charge d'Affaires of the U. S. proposed with earnest solicitude to draw the attention of H. E. principally and almost exclusively towards certain proceedings of Mr. Louis Vernet, who claimed, under a decree of the government of this province, dated June 10th, 1829, to be Civil and Military Commandant of the Malvina Islands and all those adjacent to Cape Horn (including Tierra del Fuego,) in the Atlantic Ocean, forming on such proceedings various complaints and charges against the aforesaid commandant, and declaring himself authorised to utterly deny the existence of any right in this Republic to interrupt, molest, detain or capture any vessel belonging to the U. S. of North America, or any persons whatsoever, being citizens of those States, engaged in taking seals or whales or any species of fish or marine animal in any of the waters or on any of the shores or lands of any or either of the Mal-

vina Islands, Tierra del Fuego, Cape Horn, or any of the adjacent islands in the Atlantic Ocean. In consequence thereof, and of the outrages committed by Mr. Louis Vernet on the persons and property of American citizens, His Honor demanded the restitution of all captured property belonging to the said citizens, which may be at present in the possession of this government or in that of Mr. Louis Vernet, remonstrating also against his appointment as Civil and Military Governor of the Malvinas, Tierra del Fuego and other islands in the Atlantic Ocean adjacent to Cape Horn, and claiming ample indemnity for all other property of American citizens which may have been seized, sold or destroyed by the said Vernet or any persons acting under his orders; and full and ample immunity and reparation for all consequential losses and damages arising therefrom, together with full indemnity to all American citizens for personal wrongs, whether resulting from detention, imprisonment, or personal indignities.

In reply, the undersigned in his note of the 25th June had the honor to make known to the Chargé d'Affaires of the U. S., that the Government had resolved under that date to require from Mr. Louis Vernet, explanations on all and every subject of complaint against his public conduct, in the cases resting on his responsibility; and that when it should be enabled to form its opinion thereon, as well from what the said Vernet might set forth as from the grounds on which His Honor founded his remonstrances, His Excellency would then discharge his duty without infringing the individual rights of the citizens of North America who may prove to have been aggrieved or injured, and likewise without sacrificing to exorbitant pretensions the rights of Mr. Louis Vernet; and much less the public ones, which, by the common law of nations, belong to the Argentine Republic as a sovereign and independent State.

After the undersigned addressed to the Chargé d'Affaires the communication alluded to, His Honor, in a note of 26th of the same month, endeavored to maintain that such explanations were unnecessary, inasmuch as Mr. Louis Vernet had publicly acknowledged under his own signature the fact of the capture of the American vessels, as if this were the only charge and complaint brought forward by the Chargé d'Affaires; thus shewing his desire to vary the course of the negotiation, since without desisting from the charges he had adduced, nor from the denial of the right of the Argentine Republic to the Malvina Islands, &c., he limited himself principally to exact (insisting on the same in his subsequent note of 11th July) that this Government should declare, if whether on its part it claimed to have any right or authority to detain or capture, or otherwise molest, interrupt or impede the vessels or the citizens of the United States employed in fishing in the waters on the coasts of the Malvina Islands and the other before mentioned places.

This want of stability, evinced in the first step taken by the Chargé d'Affaires, is, in the opinion of the Government, an indication of the violent efforts which His Honor makes to present as an incidental consequence of the principle point in discussion, the daring and cruel outrage committed in the said islands by Mr. Duncan, Commander of the U. S. Ship-of-war *Lexington*,—destroying in a time of profound peace, with rancorous fury and in a manner alike perfidious and ferocious, a settlement which had been formed publicly by this Government without meeting at the time any opposition, and of which it had subsequently remained in full possession, in virtue of the indisputable right it had, and still has, to those islands.

His Excellency believes that he should have been guilty of a breach of duty had he dissembled in a case of such marked incongruity, listening to the pretensions of the Chargé d'Affaires. The barbarous act, committed by Mr. Duncan, in contempt of the established customs of civilized nations and the courtesy which they invariably observe towards each other, is the point which should take precedence in the consideration of both Governments. It has attracted the public attention in every part where the news of that heinous outrage has reached—it has excited the disgust of all those who possess sentiments of justice and humanity—it has intensely wounded the honor and dignity of both Republics, by contemning and outraging the Argentine—and tarnishing and detracting from the credit and reputation which the United States have ever merited.

The truth is as ostensible, as it is easy to be felt. In order, however, to render it more palatable, the undersigned will for an instant admit all His Honor has alledged, in support of his assertion, “that the Argentine Republic has no right whatever to the said islands;” he will also admit that the government of this province, having acted under a mistaken belief in conceding to Commandant Vernet the exclusive right to the seal-fishery on those coasts—which the latter claims and defends in behalf of himself and of his colonists—that that right was null and void, and consequently that the capture of the *Harriet*, *Superior* and *Breakwater* was an unjust act. Even so: after these momentary gratuitous concessions—as commandant Vernet acted under the belief that he was merely exercising the same right by which he who considers himself robbed, apprehends the thief with the stolen property in his possession, and carries him before the nearest authority to which he is subordinate, in order that he may receive justice at its hands—it is evident that the capture which the said Vernet made can never be construed into an offence from nation to nation, or even as a formal act of injustice between man and man. The worst conclusion that could be drawn from it would be that it was a fault committed in good faith, under a wrong impression, and for which the captor was in nowise culpable.

In such a case, what ought to be done in conformity with the rights of nations, and the established practice of all civilized people who admit the principles of justice and moderation for the standard of their conduct? What course should be followed in order to preserve peace and harmony among the general society of nations, and to cause right to be respected by means of reason and conviction? Is it, perchance, that any commander of a vessel belonging to the nation of the captured party should take upon himself to destroy the place to which the captor belonged, load the inhabitants with irons, carry them captive to foreign lands, and despoil them of their property? Certainly not: such conduct would never have been resorted to towards powerful nations such as England and France; it could only take place by an ignoble abuse of strength against weakness, or between savage people who know no other law than the dictates of their own passions, and who adopt no other method to obtain redress for their real or fancied injuries, but such as a blind and ferocious revenge instigate.

Every sovereign government has the exclusive right of judging its own subjects within the limits of its own dominions; and, in the exercise of this right, it should be considered sufficiently just to oblige them by legal means to make reparation for any loss or grievance they may cause to a foreigner. In this respect, the presumptions are always in its favor, so long as there is no positive evidence to the contrary. Hence it is, that the rational and just measure which, in the supposed case, ought to have been adopted by the captain of the *Harriet*, is the same which is admitted by all civilized nations in the world, when a privateer, through error in fact or in right, unjustly captures either a merchant or a fishing vessel, and carries her with her captain before the competent authority of the country under whose flag he cruizes. Capt. Davison ought to have laid his complaint against commandant Vernet before the authorities of the Province, have justified his proceedings upon the same principles (or others,) which are at present adduced by the *Chargé d'Affaires*, and consequently demanded reparation for all losses and injuries which Mr. Louis Vernet, as commandant of *Malvinas*, had caused him.

If the authorities, admitting the justice of the claim, granted reparation, the affair would then have concluded in a rational and pacific manner; but, if on the contrary, redress were denied, that even would not form sufficient grounds for insulting the Argentine flag or justify the commission of such a violent and inhumane outrage, as that perpetrated by Captain Duncan. There still remained recourse to the pacific means of negociation—and if by negociation no redress could be obtained for notorious injustice, then, and not until then, should force be resorted to; not, however, by a Commander of a vessel, rushing, as he did, by surprise and with

deceit like a robber or a pirate, upon a defenceless settlement, unsuspecting of danger, in a time of profound peace and relying on the good faith of all nations : but, by adhering to all those previous forms and ceremonies as hitherto invariably observed, and which in the present day more than ever most scrupulously influence the councils and resolves of every civilized nation, before declaring war against another. Wattel, whom the Chargé d'Affaires has quoted in one of his notes, in support of his arguments says in book the 2d, chap. 18th, paragraph 354, " That those who have recourse to arms without necessity are a scourge to the human race, are barbarous enemies to society, and rebels against the law of nature, or rather against the laws of the common father of mankind.

Capt. Davison and the ex-consul Slacum did not act in conformity to this doctrine. Both refused to adhere to a proper line of conduct. The former preferred to abscond from his vessel in the face of an official communication from the then Minister of Foreign Relations, Dr. D. Tomas Manuel de Anchorena, addressed to the latter at the petition of Commandant Vernet, to the effect that he would intimate to the said captain that if he absented himself from the country, he should leave an agent properly instructed in the cause under procedure, in relation to his capture, in which the before-mentioned Vernet was desirous he should answer to the charges he intended to bring against him. The ex-consul refused to convey that intimation ; he engaged in inopportune and extemporaneous questions infinitely beyond his official character, going to the extreme of adopting uncourteous language, inconsistent with that modest respect with which the government of every sovereign State ought to be addressed. At the same time Capt. Duncan interfering in the affair, had the audacity to write to the before-mentioned Minister in an uncivil and impolite manner.

All irregularity, injustice, insult and violence have therefore been on the part of Messrs. Slacum and Duncan, but the more especially on that of the latter, for having carried to the last extremity his grossness and ferocity, destroying with unspeakable inhumanity and perfidy the colony of Malvina Islands. Thus have they openly contemned, depressed and outraged the dignity of the Argentine people, with manifest dishonor to their own nation and government.

In the presence of such evident and scandalous aggressions, which do not admit of doubt or denial, it becomes the duty of the government of this province, acting for itself and as charged with the foreign affairs of the Republic, to demand, before all things, from the government of the U. S. of America the most prompt and ample satisfaction for such outrages, and full redress and reparation to the Argentine Republic, to commandant Vernet, and to

the colonists under his jurisdiction in the Malvina Islands, for all the damages and losses of whatever nature they may be, which they have suffered and are suffering in consequence of the aggressions committed by Capt. Duncan.

In virtue of this, and seeing that the Chargé d'Affaires of the U. S. has declared that he is fully authorised to treat on the subject, the undersigned has orders from his government to demand from His Honor, as he now does in the most solemn and formal manner, the already expressed prompt and ample satisfaction, reparation and indemnity, for all damages and losses incurred.

The government, notwithstanding its full confidence in the magnanimity and rectitude of principles which that of the U. States has ever evinced, and although it is persuaded that the latter will not deny the absolute justice of this demand, or that it is bound in honor to accede to it. Nevertheless, as the nature of the question requires this mode of proceeding; and as, on the other hand, it most deeply affects the honor and dignity of the Argentine Republic, it has not been able to avoid adopting the resolution just expressed.

The undersigned has likewise received orders to state to the Chargé d'Affaires of the U. S. of America, that, until this government shall have obtained its demands, it will not enter into the discussion of any of the other points comprised in the before-mentioned notes of His Honor, inasmuch as this would be equivalent to passing over the acts of Capt. Duncan, of which the undersigned neither can or ought to lose sight for an instant. And on making this authorised declaration, he does not hesitate to assure the Chargé d'Affaires, that, in the mean time, his government will exercise its rights in the manner it may deem proper.

The undersigned tenders the Chargé d'Affaires of the United States of North America the assurances of the high attention with which he salutes him.

MANUEL VICENTE DE MAZA.

[No. XXVII.]

[TRANSLATION.]

REPORT OF THE POLITICAL AND MILITARY COM-
MANDANT OF THE MALVINAS.

EXCELLENT SIR :

Your Excellency has been pleased to furnish me with a copy of a series of charges which Mr. Baylies, Chargé d’Affaires of the United States, in his note of the 20th of June, has brought forward on the opening of the negociation relative to the Malvina Islands ; to the end, that, informing myself of its contents, *I may reply in a manner at once clear, frank and diffuse.* It is gratifying to me to find summed up all the charges directed against me, and to have thus afforded me an opportunity to rebut them at one and the same time ; removing, perhaps, by this means, the principal obstacles the government may have to encounter in the progress of the negociation now commenced. In the execution of this agreeable and delicate task, I shall not allow myself to be influenced by the example before me,—I shall not allow myself to be carried away by resentments, however just,—in fine, I shall not forget that I am addressing the chief authority of a civilized country.

Long, indeed, is the list of accusations which the Chargé d’Affaires brings against me. To proceed distinctly, I shall compress them to what is essentially necessary, and present them in a reduced but correct point of view.

CHARGE 1.—“ On the 30th day of July, 1831, the American schooner *Harriet*, while engaged in lawful business, was captured by my orders, and the captain and crew, with the exception of the mate, cook and steward, placed in confinement. I forcibly took the vessel’s papers, and several articles of provisions, which I sold, without previous condemnation. I did the same on the 17th and 19th of August following with the schooner *Breakwater*, Capt. Carew, (with the difference that the crew of this vessel succeeded in escaping with her, and reaching their own country,) and the schooner *Superior*, Capt. Congar.”

I could not have believed, that, after having so completely refuted all those points in the representation I presented to the Tribunal, which took cognizance of the seizure, and which has been

printed, and must consequently have been read by the *Chargé d'Affaires*, that such futile and unjust accusations would have again been brought forward. I refer to that representation, and I will add, by way of *memorandum*, that I therein demonstrated,—

- 1st, That in the year 1829 I found the *Harriet* loaded with seal skins which had been taken in that jurisdiction. I generously permitted her to depart with her cargo, warning her that in case of the recurrence of the offence, both vessel and cargo would be confiscated; and, to make the notification more complete, as she returned again in 1830, I delivered the captain a circular containing the same general warning.
- 2d, That, in violation of this solemn prohibition, which I was expressly charged by the government to promulgate and carry into effect, as governor of that district, those three vessels continued the same traffic, and were consequently detained, together with every thing belonging to them, to be arraigned before the competent; tribunal which voluntary violation has been confessed and admitted by the captains of the *Harriet* and *Superior* in the contract we afterwards entered into.
- 3d, That I received by inventory all that was on board the *Harriet*, but nothing was touched belonging to the *Superior*, as it was not necessary, nor of the *Breakwater*, as she made her escape.
- 4th, That a small part of the articles belonging to the *Harriet*, that is to say, provisions, were of necessity divided amongst the colonists, in order to neutralize the effects of the presents *Capt. Davison* had clandestinely and prodigally distributed amongst some of them, as it was but just that such of the colonists as remained faithful should not be deprived of that which the others enjoyed; and it being once necessary to make the distribution, it could only be done in the way I adopted; that is, by distributing the provisions by rations to such as were on duty, and by selling them to those who were not; the which could cause no injury to the owners of the *Harriet*, for, if she should not ultimately be condemned, the value of these provisions, which would scarcely have amounted to one hundred dollars, was secured to them by the inventory taken.
- 5th, That a great part of those articles still existed at the period of my departure from *Malvinas*, and another part still more considerable was distributed amongst the crew of the *Harriet* and the passengers who went in the *Elbe*, and served also to provision the *Superior* when she sailed afterwards to the southward. And I now add, that, with respect to the papers, I not only had authority to seize them, but it was my duty so to do, as captor of the vessel, in order that they might be produced on the trial.
- 6th, That the restraint (not confinement, for he was not one instant imprisoned,) imposed on *Davison* by placing a guard to prevent his communicating with the vessel or crew, was a measure which his bad conduct rendered necessary,—one of those precautionary measures which

every government can legally adopt in times of extraordinary peril. Davison and his crew were at liberty, and what was the result? The seduction which he had begun to practice, and the formal preparations for a conspiracy, which would have caused blood to flow, and have annihilated a weak colony. Then it was that the crew were imprisoned, but only for the short space of time which elapsed prior to the voluntary departure of the conspirators for Rio Janeiro.

All this and much more has been demonstrated in the representation of which I now accompany a printed copy, in order that Your Excellency may be pleased to transmit it to the Chargé d'Affaires. I therefore consider it unnecessary to enlarge more on these particulars, although in the reply to the other charges I may perhaps touch on some of them again. For the present I have only to remark: 1st; That the facts related have been all proved in the course of the trial, as may be seen by the papers relative thereto, and the Chargé d'Affaires can call for certified copies of them if he deem proper. 2d, That the competent Tribunal has declared, the said vessels to be lawful prizes and consequently has justified my proceedings.

But the Chargé d'Affaires, has brought forward other charges still more unfounded, so much so that even the ex-Consul Slacum notwithstanding the levity and causticity, with which he conducted himself in this serious affair, was not bold enough to advance them. Let us proceed to examine them.

CHARGE 2.—“The captain of the Breakwater who remained in Malvinas with four men when that vessel made her escape, desired to come to Buenos Ayres, but nevertheless I compelled him to go to Rio de Janeiro in a British vessel.”

All the individuals of the crews of the three schooners who sailed for Rio de Janeiro in this British vessel (Elbe), which I had freighted, and which was the only one that then offered, went because they chose to do so, with the express knowledge and consent of the captain; and not because they were compelled to it. This also will be found proved in the before mentioned papers. For the rest, this is the first time I have heard that, the captain of the Breakwater desired to come to this place in the Harriet in which I myself came, and with the same frankness I will now say, that had I known it and even had he solicited me, I would not have consented to it. The Harriet brought only four men of my confidence, Capt. Davison came in her, and it would have been a stupid imprudence, which might have been fatal to me, had I consented that Carew should have accompanied us, inasmuch as even when I was in the very centre of my resources in the colony, they had barefacedly set on foot a conspiracy. And was I to give them the opportunity of ef-

fecting it with more facility on board the *Harriet*? I can prove that at the time we sailed Davison had formed the design of running away with the vessel.

CHARGE 3.—“I forced the captain and crew of the *Superior* with the vessel, into my private service and for my personal interest. I induced them to enter into a mercantile contract, in pursuance of which, they were to go to the South, beyond my jurisdiction, for the purpose of taking seals on my account. In this written agreement, they were induced to confess that their vessels had been seized by me, as Civil and Military Governor, for having violated the laws of the Republic, notwithstanding they had been previously warned not to do so. Regardless of the usages of nations, I compelled these individuals who were depressed by imprisonment and sufferings, to bind themselves by oaths to do nothing to compromise my interests; and to agree that any infraction of this contract should be considered as a breach of good faith and that no laws should liberate them from the penalties and forfeitures, which in that case I might deem proper; all for the purpose of securing my piratical interests. In this mode, instead of bringing the infractors to trial, I obliged them to enter into my service for my personal interest. I substituted myself in the place of the owners of the vessel. I degraded my Government and my official character, by transforming myself into a merchant, and by calling myself, in the contract, Director of the colony, instead of Civil and Military Governor.”

How many facts, how many considerations, all equally striking, crowd here Excellent Sir! Not the least important is that a man requires a great command over his feelings to avoid steeping his pen in gall when with such irritating and poignant injustice he finds himself represented in a diplomatic document as a debased character, a high sea robber, in short, Sir, as a *pirate*! But I have determined to suppress my just resentments: I owe this sacrifice to the dignity of the Government I address, and to the respect which I sincerely profess for that of the great nation, which the *Chargé d’Affaires* represents.

I will endeavor, therefore, to arrange and express my ideas, with order, on the various particulars embraced in this charge.

After the escape of the *Breakwater*, the captains of the *Harriet* and *Superior* waited on me one day and submitted to me certain proposals, which, after being duly considered, produced in result the contract referred to, which is literally as follows:

“The schooner *Harriet*, Captain R. Gilbert Davison, of *Stonington*, and the schooner *Superior*, Captain Stephen Congar, of *New*

York, having been siezed for sealing the Falkland Islands and Staten-land contrary to warning given them ; and being therefore about to be sent to Buenos Ayres to stand their trial ; and said captains considering the delays that often attend such trials, having suggested that it would be for the interest of ali concerned, that only one vessel be sent to Buenos Ayres, with the papers and documents respecting the seizure of both, and the other be permitted to go to a newly discovered, promising, sealing ground on the West coast of South America ; provided that satisfactory security could be given for the timely re-appearance of such sealing vessels, and Lewis Vernet, Esqr., Director of the colony of Port Louis, East Falkland Island, having taken upon himself the responsibility of said vessels' re-appearance ; has entered into the following agreement with the aforesaid captains, in the name of their respective owners, viz :-

“ ART. 1.—It shall be left at the option of the said Lewis Vernet, Esqr., to determine which of the two vessels shall proceed on said sealing voyage ; which he shall determine within twenty-four hours after this agreement has been signed, and state his choice in an additional article at the foot of this agreement,—then the skins now belonging to such vessel, shall be deposited in the hands of Mr. Vernet, and shall share the fate of the vessel to which they belong, with respect to condemnation or liberation, in which latter case to be delivered to the master of the vessel to which they belonged, or to the persons authorised by him to receive them : after which such vessel shall be fitted out with all convenient speed with the provisions, salt, stoves and sealing implements of both vessels, and be manned with such men as the master of such sealing vessel shall consider best calculated for sealing, and may be able to obtain ; the whole ship's company signing for the purpose such ship's articles as the fulfilment of this agreement shall require.

“ ART. 2.—The vessel thus equipped and ready for sea, shall proceed from hence direct through the Straits of Magellan to the sealing ground, on the West coast of South America, where, according to information obtained from Capt. Low of the brig Adeona and from part of his crew left on this island, great quantities of fur seal were lately seen by them ; and, for the better finding of which place it is mutually agreed upon by the contracting parties to employ — Clarke as pilot,—the same having lately belonged to the Adeona, and considering himself competent to find the place ; and the vessel after having obtained the cargo of seal skins, or done her best to obtain one, shall, at the end of the season, return direct to Port Louis (dangers of the seas only excepted) and anchor in the basin where she now lays ; then the voyage shall be considered as ended, and the vessel and cargo to be delivered up to Mr. Vernet upon the condition stated in the following article.

“ART. 3.—It is understood by the two contracting parties, that the said intended sealing voyage shall be for account of Mr. Vernet if the vessels are condemned, and for the owners in America if not condemned, viz. : one half for each owner in America, and whether condemned or not condemned, the skins shall be counted, and the ship’s company shall then immediately receive in skins the share that according to the ship’s articles are due to them; after which, Mr. Vernet obligates himself, according as the result of the trial, that is to take place in Buenos Ayres, may be, that is in case of liberation, to deliver the remaining skins (that is the whole, less the quantity delivered to the ship’s company according to the ship’s articles) to the captain of the vessel, as lawful agent of both owners in America, and in case of condemnation, Mr. Vernet shall keep said remaining skins; and, in order to avoid differences and doubts arising from unforeseen events, as well as to secure more expeditiously the pay of the ship’s company at all events, (save dangers of the seas); it is also understood, that if, after a trial in Buenos Ayres, there should be a decision different from a full condemnation or a full liberation of both vessels and cargoes, such as, that only one vessel being condemned and the other liberated, or the vessels liberated and the cargoes condemned, or the vessels condemned and the cargoes liberated, or one or more parts being liberated on the payment of a sum of money, being imposed by the court that tried them in Buenos-Ayres, or the like unforeseen events, in that case the sealing voyage shall be considered as having been made, one half for account of Mr. Vernet, and the other half for account of the owners in America, and the skins to be divided accordingly, each paying previously to the ship’s company in Port Louis the pay due according to the ship’s articles, constituting thus a full pay.

“ART. 4.—The master of the sealing vessel shall obligate himself by a solemn oath, that he will neither by word or deed, in any manner or shape, do on this present voyage any thing that can compromise the interest of Mr. Vernet in the responsibility that he has taken upon himself, by the delivery of the vessel to said master for the intended voyage; but rather to counteract any evil disposition that might perhaps be displayed or suspected in others under his command, which obligation he will act up to in good faith, without seeking excuses; in short, to be guided by the principle ‘to do as he would be done by,’ and for the easier fulfilling of this article, the master will endeavor as much as possible to avoid a communication with other sealers on this present voyage, unless he should meet any in distress, or be in distress himself, and he shall not be required by Mr. Vernet to do any thing on this voyage that is in any way unlawful.

“ART. 5.—This agreement shall not invalidate the right that the owners in America might think they have to claim damages, which claim of damages shall, however, with respect to skins, not exceed two thousand five hundred prime fur seal skins, for each of the two vessels, in case the sealing vessel gets no skins at all; but if she gets any skins, then the above number shall be lessened according to the number that she may have acquired on the present voyage.

“ART. 6.—The sealing vessel, being then delivered into the hands of the master, with a crew of his own choice, without further security than his word, any wilful deviation from this agreement (of which at present there is not the most distant idea,) shall be considered a breach of faith; and no laws shall liberate him from the penalty and forfeitures incurred according to the following article.

“ART. 7.—For the true and faithful fulfilment of this agreement, the contracting parties, Captain Stephen Congar and Captain Gilbert R. Davison, for themselves, and in the names of their owners, on the one part, and Mr. Lewis Vernet on the other part, solemnly bind themselves in the penal sum of five thousand dollars, and the forfeiture of their respective shares in the voyage alluded to in this document; which forfeitures shall be applicable in favor of the part that fulfils the agreement.

“Given under our hands and seals in Port Louis, East Falkland Island, this eighth day of September, one thousand eight hundred and thirty-one.

GILBERT R. DAVISON. [SEAL.]
STEPHEN CONGAR. [SEAL.]
LEWIS VERNET. [SEAL.]

“Signed, sealed and delivered in presence of

JOHN TRUMBULL, }
MATTHEW BRISBANE. }

“ADDITIONAL ARTICLE 1st.—I, Lewis Vernet, mentioned in the foregoing document, have, in conformity to the first article of said agreement, determined, and do hereby determine, that the schooner Superior, Captain Stephen Congar, shall be the vessel that is to proceed upon the intended sealing voyage. In Port Louis the year, day and date before mentioned.

LEWIS VERNET.

“ADDITIONAL ARTICLE 2d.—I, Stephen Congar, approve the choice made of my vessel; and oblige myself to act according as is stipulated in the foregoing agreement for the master of the therein named sealing vessel to act, and hereby make the oath required in the fourth article of said agreement; and I, Gilbert R. Davison, also approve of the said choice, and do hereby obligate myself to act for, and in the cause of both vessels in Buenos Ayres,

according to the best of my judgment, by myself or by my power of attorney. In truth whereof we have each signed the second additional article, in Port Louis this eighth day of September, one thousand eight hundred and thirty-one.

GILBERT R. DAVISON,
STEPHEN CONGAR.

JOHN TRUMBULL,
MATTHEW BRISBANE. } Witnesses."

All the clauses in this contract manifest the entire and absolute liberty with which these captains signed it. The idea did not emanate from me; it was a proposal made to me by them. They themselves selected the crew from among those of both vessels, and even took various individuals of the colonists. And indeed, how would it have been possible for me to force them to such an act, as the *Chargé d'Affaires* asserts,—and what were those sufferings and those imprisonments which could produce the moral co-action? However certain these supposed sufferings might have been, they never could have exceeded those which they would entail on themselves by becoming my slaves—yes, slaves, for so it has pleased the *Chargé d'Affaires* to represent them—slaves who were to be employed in painful labor solely for my personal advantage. To believe that the contract was the effect of coercion, it is necessary to suppose that these captains were either children or imbeciles. Above all, Excellent Sir, it is an absolute contradiction to suppose that I kept these persons imprisoned and oppressed, and that at the same time I induced and forced them to an agreement, in virtue of which they were to cease to suffer, liberate themselves from my oppression, go to sea without any other guarantee than their own good faith, and, in short, become masters of themselves. It would appear that in politics as well as in the business of private life, the bias of the heart banishes reflection from the mind, and produces striking inconsistencies.

The idea that, in the celebration of this contract, coercion of any species whatsoever had been resorted to, being thus removed, I will now shew, first, that the contract was at once useful to the colony, to the captains and to the crews: and secondly, that I could enter into it without either swerving from my duty or degrading my public character.

It was useful. The primary advantage resulting from this measure to the colony was that of removing from it persons who might be prejudicial to it, and changing their then hostile disposition into a friendly one, by attaching them to its interests. The colony was not strong enough to enforce respect from the crews of both vessels, which, after the attempt previously made at revolt, necessarily required my utmost vigilance. Strictly speaking, I had at that time in all the colony only 20 men, natives of the country, in whom

I could place confidence. It was not prudent to confide too much in the rest of my colonists, since the greater part of them were easily open to seduction, in consequence not only of their speaking the same language as the crews of the captured vessels, but likewise because many of them were countrymen. Thus it is, that during the detention of the crews, those 20 men had to mount guard over them at night, for which they were paid a silver dollar per night each. This continual and painful fatigue in the snowy season, and during the excessively long nights of that latitude, produced in them weariness and want of vigor, and necessarily caused them to abandon the labors of the colony during the day. It became, therefore, absolutely necessary to relieve it from such an unnatural and ruinous state of things. Happily it was under these circumstances that the captains made their proposal, and this proposal presented to me the best opportunity to get rid of these presumed enemies, in the manner which they themselves desired and solicited. The second advantage consisted in the positive utility which this stipulation would produce to the colony, if (as there was every reason to hope,) the Superior should faithfully fulfil her agreement; and in truth, since it was undeniable that these schooners had been engaged in a business from which they knew they were prohibited under pain of confiscation; since in the contract the captains themselves had confessed this most essential point, the following proposition became to me not a mere hope, but an absolute certainty. These vessels, together with their cargoes, must necessarily be declared lawful prizes in Buenos Ayres, (and experience has since proved it to be so,) consequently I had a right and ought to calculate upon the secure foundation that these vessels, together with their cargoes, would eventually become the property of the colony, and I said to myself, a long time must elapse before the trial relative to the captures be concluded in Buenos Ayres, (and experience has shown that neither in this was I deceived); in this interval these vessels and their cargoes will be laid up and rot (as is the case at present with the Harriet,) in the roads of Buenos-Ayres; it is therefore better that in the mean time one of the vessels be employed in the seal-fishery in the Pacific, and that the other go direct with me and one of the captains to Buenos Ayres, for the purpose of bringing on and concluding the trial in question. This was done, and done at the request of the only persons who, under any other circumstances, might have had reason to complain of it; it was done, too, for their own benefit. Your Excellency will observe that, according to the contract, the cargo which the Superior might obtain would belong to the colony, should the vessels be declared lawful prizes, or to the owners, should they not be condemned; and, in either case, the crew were to receive their share. It is evident, therefore, that such a con-

tract far from being prejudicial, in the slightest degree, was on the contrary highly beneficial to the owners of the vessels; because, if they were declared to have been illegally detained, they could lose nothing by this voyage; and, in the contrary case, they would be considerable gainers. It was highly beneficial to these captains and their crews; for, instead of being detained in the islands, they put to sea in perfect liberty; and instead of consuming in idleness the long space of time the trial might require, they would be earning a good salary. I believe that even the greatest idiot would form this conclusion, and that, on perusal of the contract, the Chargé d'Affaires will be undeceived as to my having compelled these men to work for my own private advantage—he will see that the Superior went on her voyage for the benefit of whoever might prove to be the proper owner, and, under all circumstances, for the emolument of the crew. To afford great and certain gain, and besides complete liberty to men who could not then, nor would, for a long time, be able to earn a single cent, and who are represented as having been imprisoned and barbarously oppressed on the island, is an act which ought rather to have excited gratitude on the part of the Chargé d'Affaires.

But unfortunately he has not viewed the subject in this light. Far from reflecting on the impossibility of loss and the certainty of gain, which, in either case, must result to the captain and crew of the Superior, he sees nothing but seduction and violence in this contract. He even believes he finds the same in the clause which imposes penalties on the party who should infringe the agreement—penalties which are customary in all such contracts, although denominated by him *forfeitures at my discretion*. He likewise sees seduction and violence in the clause which declares every infraction thereof an inexcusable violation of good faith. How different amongst men are the conceptions of the mind! It appears to me, that all must find in this clause and in the oath by which the captain bound himself to the due fulfilment thereof, the customary form of all agreements, and which was absolutely indispensable in that which we entered into in the Malvinas. I had absolutely no guarantee whatever that the Superior would fulfil the contract and return. Its execution depended entirely on the good faith, on the word, on the honor of the Captain; consequently it was not strange nor was it prejudicial to him that this should be expressed in the contract. In what, then, is this oath opposed to the customs or usages of nations? I think likewise that every impartial person, on viewing the unbounded confidence with which I allowed to go out of my possession a vessel which I considered as the future property of the colony, and at the same time consented that the captain should select for his crew men in whom he could confide, with no other guarantee for his return than the mere oath of said cap-

tain, far from criminating me, and of attributing to me depraved intentions, will discover just motives for approving my conduct. In fact, Excellent Sir, under the critical and extraordinary circumstances in which the colony was placed at that period, this measure saved it from all risk, offered it a prospect of great gain, afforded the crew profit and employment, and favorably inclined the captain and crew. Thus it was, that, scarcely had the contract been signed, when all was joy and satisfaction among these men. I have in my possession letters from various individuals of the said crew, in which, after treating on other matters, they manifest their content, and return me thanks for my kind conduct towards them. Some of these letters, and others that the same individuals addressed to their comrades in Staten Land, were written when they were on board of the Superior and out of my power. I have also a letter from the captain, written under the same circumstances, in which he again requests my commands. Can this be reconciled with the idea that they were forced to make this voyage ?

I could legally make this contract. Perhaps the opposite opinion of the *Chargé d'Affaires* arises from his complete want of knowledge on the subject, although on the other hand, it must always appear strange, that without either privately or officially calling for information he should have opened the negociation, by thundering a tremendous accusation, which although directed against me personally, falls indirectly on the government with whom he is negotiating.

Be this as it may, it is essential to establish the facts. By a decree bearing date of the 5th of January, 1828, the property of the waste lands on the island of Soledad was granted to me, on condition that I should establish a colony within the term of three years : to the colony was granted an exemption of taxes and imposts for twenty years, with the enjoyment of the fishery in all the Malvina Islands and on the coasts of the continent to the south of the Rio Negro. By this it appears that the character of my undertaking to colonize the Malvinas was exclusively and essentially mercantile ; and thus it was that I, with my own capital, and without any assistance whatever from the government, had established the colony and maintained it in the same manner, under the title of Director, which was conferred on me by the before-mentioned decree. The colony commenced various labors, and entered on the enjoyment of the rights and privileges so granted. The depredations of foreigners on the coasts still went on, and there was no force in the colony capable of restraining them, nor was there any public officer to protest against them. This state of disorder obliged me to require the government to adopt some measures. Accordingly, by decree of the 10th of June 1829, it ordered that a civil and military governor of those islands and their adjacencies up to Cape

Horn should be appointed, imposing on him the duty of carrying into effect the regulations relative to the seal-fishery. The nomination of this charge might have fallen on any other person than the *Director*. But the government, either believing me to be the most proper person, or to save the expense of a salary, which, in any other case, would have been necessary, thought it expedient that the *Director* of the colony should also be civil and military governor; and, by another distinct decree, although of the same date, it nominated me to fill this office.

The decree which ordered that a governor should be named was published by the press; but the other under the same date, in which I was appointed governor, was not published. This circumstance has doubtless given rise to the idea that I had appropriated to myself this title; if not, how is it possible that the *Chargé d'Affaires* should in his note write as he has done, in the belief that my character as governor was fictitious? It is therefore necessary that he should be convinced that I am so in reality, and your Excellency can give him official knowledge of the fact by transmitting him a copy of the decree by which I was appointed.

It is self-evident that the title of governor, which relates to public business, did not divest me of that of *Director* of the colony, which is relative to my private and mercantile undertaking, but rather was intended to secure the interests of the enterprize; it did not divest me of that mercantile character, since it was precisely for mercantile objects, which were at the same time highly beneficial to the country, that I had established the colony, and from the moment I should be deprived of the power of acting as director and undertaker of it, and of performing acts of commercial speculation, the colony would fall to the ground, and the burthensome charge of governor of the islands would be of no utility to me. What therefore is the deduction? That I could legally perform private acts of commerce for the benefit of my colony, in the same manner as if I had never been invested with the title of governor: that the enjoyment of this title solely imposed upon me the obligation of carrying into effect within my jurisdiction the laws peculiar to the province of Buenos Ayres, as well as those relating to the fishery: that I could enter into the contract referred to, inasmuch as it was a private speculation, and that consequently the *Chargé d'Affaires* has been egregiously mistaken in believing that I degraded both my government and my public character by entering into mercantile enterprizes, since I could consistently do so. He is likewise mistaken when he believes that I had some concealed intention, when in the contract I styled myself *Director*, and not *Governor*, as I made that contract precisely as *Director* and not as *Governor*.

Your Excellency is now enabled to judge whether there exists even the semblance of justice in all that Mr. Baylies has advanced in this charge—whether he is entitled to accuse me of any act really reprehensible, or, still less, to insult me—and whether, with regard to my person, he is not bound in duty to alter his opinions, as well as the language which he has unfortunately adopted to express them.

CHARGE 4.—“I sent to Rio de Janeiro all the crew of the
“Harriet with the exception of five men who entered into my
“service.”

I have already spoken on this point; I have shewn the necessity which existed for the removal of these men, which was effected with their own free will and with the consent of their captains.—There only remains for me to add that these five men were at complete liberty: they were already on board the *Elbe*, under the British flag, and on the eve of sailing for Rio de Janeiro: their names were inscribed in the passport. Under these circumstances, they returned on shore and solicited permission to enter into the service of the colony: I consented to it, and contracted with them: they commenced their labors, and requested some advances which I made them; when suddenly they entered into the service of an English ship bound for the Pacific, leaving me unpaid and with the loss of all I had supplied them with.

CHARGE 5.—“The Superior had left seven men on Staten
“Land with provisions for only six months, and owing to her
“detention in the Malvinas, they were exposed to perish on
“that desolate island, as the Superior was bound in this con-
“tract to go and return direct, to avoid all communication
“with other vessels, and to take no step to succor these men.”

In the first place, Your Excellency will be pleased to remark, that the Island of Staten Land, is within the jurisdiction of my government, and Your Excellency will perceive that it is for this reason, that the Chargé d’Affaires has remained silent as to the object for which these men were left there. The Superior left them previously to her detention, that they might employ themselves in killing seals and storing up the skins; that is to say, for a prohibited and clandestine occupation. Your Excellency, who has before you the contract, will judge of the correctness of the assertion that the Superior was prohibited from succoring them; when the only prohibition existing was, “that she should not communicate with other sealing vessels,” and even to this she was not bound in case of accident or distress. So far was I from wishing to prevent these men from receiving assistance, that, after the Superior had sailed to the South, I sent the *Harriet* to succor them, as well as to col-

lect various articles which were scattered about the island ; all with the express consent of Capt. Davison, with whom, on the 16th of September, I signed an agreement to that effect. According to this agreement, the Harriet, which was to sail under the command of Capt. Brisbane accompanied by Davison, should, at the same time, bring from different parts, there designated, seal skins, timber, &c. &c., on my account ; but I was to pay Davison no less than seven and a half per cent on all he should bring, as also the wages of the master at the rate of forty two dollars per month, the mate thirty, together with seven seamen and eight guards at fifteen hard dollars each. Such, Sir, were the contracts with which I swindled these captains, and made them labor for my benefit.— Know then, Your Excellency, that the cause which impeded the succoring of these seven Americans (as appears in the process) was an American schooner from New York, the Elizabeth Jane, which, although only a fishing vessel, was illegally armed with six guns : she, when she fell in with the Harriet, proposed to take her by force and thus liberate her from the detention she was under. Davison opposed this, pointing out the probable consequence which might result therefrom, as Brisbane would resist by fighting to the last extremity. The Elizabeth Jane, notwithstanding, clearly appeared preparing to carry her project into execution, and thus obliged the captain of the Harriet to return immediately to the colony, in order to avoid a greater evil, without being able to accomplish the principal object of his voyage, viz., the succor of those men ; and thus I lost in wages alone four hundred hard dollars. Since the Chargé d’Affaires has mentioned this affair, he ought not to have remained silent on the principal part of it, nor to have dissembled the criminal conduct of the Elizabeth Jane—yes, criminal ; and thus it is that, to evade the effects of the remonstrance Your Excellency might make to the Government of the United States, scarcely had this vessel arrived at New York when she was advertised for sale in a journal of that city under date of the 7th of March.

No less remarkable is the want of correctness with which he asserts that the Superior left provisions with those men for only six months ; when the captain of that vessel positively stated that he had provisioned them for nine months : and that he did so is clearly shewn by the log-book of the vessel, which is in my possession. This is also corroborated by the following incident : Captain Duncan of the Ship-of-war Lexington, committed the incivility of sailing from these roads for Malvinas, without waiting for a reply from Your Excellency ; which, I may be allowed to say by the way, was really *acting in contempt of the established usages of nations*. Mr. Slacum, then Consul, in a note which he addressed to Your Excellency, endeavored to excuse this want of courtesy in Duncan, under pretence of the urgent necessity which existed of rendering assis-

tance to the men left on Staten Land. Any one would naturally conclude from this, that the first care of Duncan was to sail direct, and without losing an instant, to the succor of these men. But the fact is, that he went to Port Louis, and occupied himself in the heroic achievement of destroying in a vandalic manner the colony established there, and imprisoning and enchaining a few unarmed and unsuspecting Argentines. It was not till twenty days after his arrival at that place, that he recollected the urgent necessity which had obliged him to leave these roads; he then sent the schooner Dash to the assistance of the men, but not direct to Staten Land, as she had orders to touch first at various other islands, on the mercantile business of some American citizens. These islands being to leeward, must necessarily have detained the Dash a long time; so that we are ignorant up to this day whether or not those seven men ever received assistance. This fact shews how insignificant is the parade with which the Chargé d'Affaires wishes to represent the great danger to which those men were exposed.

Besides, had they perished, the blame would rest with the Superior only. She had left them there, knowing that the business in which she was engaged was illegal—that what has happened, might befall her; and that in this event they would be abandoned.

Above all, was it because these men might be exposed to danger, (which, as I have said, was not the case,) that I should abstain from detaining the Superior? In this mode, any vessel could elude all prohibitions and forfeitures, by merely leaving on some island a part of her crew, as she could not be detained under the pretence that in the mean time they might perish for want. In fine, Sir, the fact is that the urgency of the succor which Mr. Slacum represented in his note, forms a striking contrast with the calmness and indifference with which the captain of the Lexington viewed these men; and hence I infer that either the latter rendered himself highly criminal by such apathy, or there was no truth in the urgent necessity of succor for want of provisions, which Mr. Slacum then deceitfully affirmed, and the Chargé d'Affaires now erroneously insinuates.

CHARGE 6.—“I endeavored to seduce American seamen
“ from their own flag, and allure them to mine by the promise
“ of extravagant gain.”

This charge is reduced to the assertion that *I endeavored*. But what are the deeds that the Chargé d'Affaires relates? Absolutely none—and therefore, as this aerial charge does not rest upon any determined deed, it is not susceptible of a positive refutation. It will consequently suffice for me to affirm that neither the Chargé d'Affaires nor any other person, can reproach me with a deed of

that nature. Constantly opposed to desertion, far from endeavoring to seduce any seamen, whether Americans or of any other nation, I have invariably followed the system of not admitting any of the many who frequently presented themselves to me in the Malvinas, without the previous and express consent of the captain of the vessel to which they belonged. If I admitted the five men of the Harriet, alluded to, it was because they did not belong to any vessel.

CHARGE 7.—“ I imprisoned without any consideration the
 “ four Americans whom the Chargé d’Affaires mentions as
 “ forming a part of the crew of the American schooner Bel-
 “ ville, which had been wrecked on the coast of Tierra del
 “ Fuego : I seized a large number of seal-skins which I sold
 “ to an English vessel, and a quantity of whalebone which I
 “ transmitted to Buenos Ayres. By threatening these im-
 “ prisoned and friendless shipwrecked men with sending them
 “ to Buenos-Ayres to be tried as pirates, I obliged them to
 “ sign an agreement on behalf of themselves and other ship-
 “ mates of theirs, who were on Eagle Island, occupied in
 “ building a shallop, in which it was stipulated that as soon as
 “ the shallop was completed, they should employ themselves
 “ with her in the seal-fishery under the Argentine flag. Not
 “ satisfied with seizing their property and treating them as
 “ slaves, I wished to *reduce them to a degree of moral debase-*
 “ *ment as low as my own* ; inasmuch as, in another article,
 “ after ironically binding them to act as honest men, I would
 “ induce them to the commission of acts of violence and rob-
 “ bery on their own countrymen, by promising to share with
 “ them the profits arising from the plunder of the vessels.
 “ In this mode I compelled individuals belonging to the cap-
 “ tured vessels to engage in my service, and even to assist in
 “ the capture of their own countrymen. On one occasion I
 “ endeavored to subdue an American seaman by the name of
 “ Crawford, who resisted my persuasions, threats and impris-
 “ sonment, by depriving him of food, and he would have pe-
 “ rished, had not Capt. Davison secretly relieved him, in defi-
 “ ance of my orders.”

I will remark in the first place that these men were five and not four, as the Chargé d’Affaires says ; only two belonged to the Belville which was wrecked, the other three had belonged to different crews, and had successively remained on the islands. Consequently it is incorrect that they were all shipwrecked men, and it is no less so that they were abandoned ; inasmuch as all of them lived on the islands of their own free will, and so much so, that, according as their accusers affirmed, they had refused a passage for their own country, which had been offered to them.

It is true that I arrested them. But why does the Chargé d'Affaires conceal the motives? I arrested these American citizens, because other American citizens accused them as dangerous persons and of a piratical disposition : among these accusers Captains Congar and Davison, particularly the latter, distinguished themselves. I have in my possession their affidavits. Therefore, if the imprisonment of these Americans was an injustice, it was owing to the calumny of other Americans.

But the Chargé d'Affaires calls me an oppressor, a robber, and a base being, for my conduct towards them. Your Excellency will judge : I did not harbor the least feeling of rancour, nor could I do so against men who had never offended me, and whom I then saw for the first time in my life ; and thus it is, that one of them having requested me to allow him to depart in the *Elbe*, I immediately consented ; and he went in her. So true is it that I acted in consequence of those formal accusations, and not in virtue of threats, to which I had no occasion to resort ; that my conduct towards them was not only just, but likewise generous. And in truth, it being a fact that they had been fishing within my jurisdiction ; and it being equally certain that their own countrymen accused them as pirates, I could with justice confiscate their skins and their whalebone, and send them to this city to be tried. But I refused to augment their misfortunes ; and the acts imputed to them not having been clearly proved, I resolved to set them at liberty, and thus to convert these then vagrants, but at the same time hardy and laborious men, into useful members of the colony, by attaching them to it for their own interest. These men, weighing the advantages which might accrue to them from this measure, against the evils resulting from the wandering life they were leading, requested to be admitted as members of the colony, and consequently under the Argentine flag. We then entered into an agreement, which to them was highly beneficial, and which, for that reason, I never suspected would draw down on me such bitter and painful insults as those now fulminated against me by the Chargé d'Affaires. By this agreement, I bound myself to render them every assistance, in the building of a small schooner or shallop, which they were constructing in a distant island, called Eagle Island ; and when finished, to allow them, as members of the colony, to fish under the Argentine flag, on shares. Such was the agreement which is now so strongly declaimed against. Is there any thing in it usurious, compulsive or extraordinary ? The fact is that when the crew of the *Harriet* were already on board the *Elbe*, and on the eve of sailing for Rio Janeiro, one of these passengers requested to be admitted in the number of the supposed *unfortunate shipwrecked seamen*, and to participate in the advantages of the agreement referred to : he was admitted ; and signed it. Fulfilling on my part the stipulation, I gave them sails, rigging.

provisions, and in short every thing requisite for finishing the construction of the vessel, but as they had no one to become bound for their conduct, and guaranty to me the fulfilment of their part of the agreement, they delivered to me, as security, one hundred and ninety-eight seal-skins, and two thousand seven hundred and forty-four pounds of whalebone, of which articles I could dispose freely, as I did. But the Chargé d'Affaires is mistaken if he thinks that for this the men were deprived of these effects, or that I appropriated them to myself, as he asserts. They did not lose them—they had then no possibility of disposing of these articles—they were embarrassing to them rather than useful, and their preservation was expensive and difficult. They therefore ceded them to me, but I bound myself expressly to return them, in the same kind, and quantity, from the half which would belong to me of the product of the fishing which was to be undertaken by the schooner. Is this robbing, Excellent Sir? Is this committing oppression or violence? Can the slightest trace of good faith be discovered in the persons who have so basely and deceitfully informed the Chargé d'Affaires on this head? Does my frank and generous conduct towards these individuals merit the infamous invectives which he lavishes so profusely against me? Sir, reason and the mutual respect which men owe to each other in society, counsel the dissembling even of the most gross aberrations of the mind; but with respect to deeds, and to deeds which profoundly wound what man most appreciates, honor, it is necessary that he be conscious of his guilt to be able to tolerate them, in like manner as it is necessary to be deeply prejudiced in order to alledge them without proofs.

Such was my conduct towards these individuals, which has brought on me the epithets of vile, robber and oppressor. These men were contented and satisfied with their new state under the flag of the Republic, and so well disposed to fulfil the obligations they had contracted, that, as soon as the vessel was ready, they returned to the port of the colony to receive new outfits and provisions, which were furnished to them. They would have fulfilled them faithfully, but for the infamous aggression committed by the Lexington. Here it is not superfluous to state that Capt. Duncan seized on the shallop, obliged her to change her flag, and thus deprived the colony and the Republic of a vessel which Your Excellency has a right to demand the restitution of. Why is the Chargé d'Affaires silent with respect to this usurpation?

But he affirms that in this way I induced and obliged American citizens to capture, and what he terms to plunder, the vessels and persons of their countrymen. This is not true. To effect the detention of the Harriet, Superior and Breakwater, no one was either induced or forced; nor had I occasion to resort to these

means. All the individuals, as well Americans as of other nations, who assisted in the taking of these vessels, did so of their own accord, and because it suited their interests; they were all members of the colony, and, as such, participators in the prizes. Now the fishery was a property of the colony, and if all who composed it had a right in the property sequestered, to make those Americans who were on the list of colonists partakers in it, was not to induce them to rob their countrymen, but to exercise an act of rigorous justice which could not be denied them from the time they became members of the colony.

For the rest, Sir, to detain myself in replying to the idle story relative to the seaman Crawford, whom it is said I attempted to starve to death, were almost to insult Your Excellency's understanding—as though, had I harbored so ferocious a design, means or pretexts would be wanting to me for carrying it into effect more decorously, in my character of Governor! And from what motive? Because he resisted the promises, threats and imprisonment by which I endeavored to compel him to assist in the capture of the vessels. Less wonderful would have been the supposed heroism of Crawford, than my stupidity in endeavoring to force into my service a man for whom I had no necessity, and in whom, from his reluctance to serve, I could have no confidence, but must always have considered dangerous. It is fit that Your Excellency should know that the supposed hero assisted like the rest in the capture of the Harriet—he would not afterwards assist to capture the other vessels, and, not only did not the least injury result to him therefrom, but he was preferred to go to the Pacific in the Superior. This is not all: he not only remained in and went freely from the islands, but the debts he had there contracted were paid by me out of my pocket. What a contrast does this conduct form with that which is ascribed to me!

But an observation occurs to me here which I must not omit. If, in consequence of this entirely disproved and utterly false assertion, the Chargé d'Affaires thinks it his duty to grossly insult me, with how much justice can Your Excellency answer him with the completely proved fact of the ferocious brutality with which the captain of the Lexington treated the innocent colonists, destroying their little property, dragging them from their homes, and carrying them with him in chains for entire months, like infamous robbers. Oh! the Chargé d'Affaires says nothing about this. Is it that in Vernet every thing is crime, and in Duncan all heroism? To deeds of that magnitude and certainty the Chargé d'Affaires should have confined himself in his accusations, instead of letting himself be diverted by silly tales, such as the supposed design of killing Crawford. But enough of this. There are insignificancies that are not, even in the trivial transactions of life, deserving the notice

of men of sense; and much less in an affair with which are intimately connected the high interests of two nations.

CHARGE 8.—“According to declarations which I have made as a public functionary, if they are to be viewed as the sentiments of my government, there is reason to believe that a project is in contemplation, involving one of the most valuable interests of the United States—the whale-fishery—for, according to the report made by Capt. Davison, I had determined to capture all American vessels, including whale ships as well as those engaged in taking seals, upon the arrival of an armed schooner, for which I had contracted. I also declared that my special victims would be citizens of the United States, and not of other nations, inasmuch as when I was told that the English vessel ‘Adeona,’ was taking seals within my jurisdiction, I replied that I could not capture an English vessel with the same propriety that I could an American.”

If there were the least truth in this charge, the complaint would be founded, and the pertinent remarks which the Chargé d’Affaires subjoins on the injustice and dangers of odious preferences among nations, would be well applied. But happily there is nothing but utter falsehood in all the information that has been given to the Chargé d’Affaires. I have never made such absurd declarations, for I have never been out of my senses.

The vessel for which I had contracted was not intended for this purpose, although Davison assured Capt. Duncan in the Malvinas that she was. To convince Duncan of the falsehood of Davison’s assertion, Capt. Brisbane, the director of the fishery, showed the contract which I had made with an American house in this capital, upon which Duncan became silent. It would appear that the Chargé d’Affaires was unaware of this circumstance. But why does he conceal the place from whence this vessel was to come? Why does he not say that it was New-York? Was it to make the refutation of this charge more difficult? He is deceived. I refer to the testimony of the American house with whom I contracted; for, although it may be now unfriendly to me, on account of the responsibility which it has incurred for the non-fulfilment of the contract, nevertheless, I am confident that it will not fail to declare the truth, that is, that the vessel was to come out equipped for the seal-fishery on account of the colony, and not armed.

It is untrue that the “Adeona” had fished within my jurisdiction. She did so before my appointment as governor, but after that period she abstained therefrom, as I can prove by written vouchers which I have in my possession, as well as the log-books of the “Breakwater,” “Harriet” and “Superior,” by which it ap-

pears that there was not then fishing in the islands any English vessel, or vessels of any other nation. Consequently, although I might have wished to exercise foolish preferences, I had not the opportunity of so doing.

For the rest, the *Chargé d’Affaires* is aware that the government with whom he is treating knows its own rights and those of others—that it is not so foolish as to attempt to hinder any nation from the whale-fishery on the high seas—that therefore there exists no such project, nor the intention of limiting to the Americans alone the prohibition of fishing within the established bounds, but that this prohibition is extensive to all nations, saving the right of the Republic to make to any of them special concessions, if it should at any time think it expedient. In consequence, as the charge is reduced in this part merely to unfounded apprehensions, I consider that the *Chargé d’Affaires* will dismiss them after a declaration to this effect.

CHARGE 9TH AND LAST.—“The decree of my appointment as governor bears the date of the 10th of June 1829, and it remained as a dead letter to the North Americans until the 30th of July 1831. The *Chargé d’Affaires* of the U. S. in this city, Mr. Forbes, died here on the 14th June 1831, and the acts of violence and depredation on American property commenced at the Malvinas immediately on the arrival there of the news of his decease. I was convinced that if I committed such atrocities while Mr. Forbes was alive, they would have roused him from the apathy with which he beheld that decree, which had entailed so many injuries on his fellow-citizens, and of which his government, till this day has not been officially informed. Had I confined myself to the capture of the vessels, and to the institution of processes before the competent tribunal, with the view of ascertaining whether the laws and sovereignty of this country had been violated or not, I would have acted within the limits of the authority which had been entrusted to me; yet, in the view of the government of the United States, even this would have been an essential violation of its rights.”

Your Excellency will have observed, that, in relation to several charges, the *Chargé d’Affaires*, in the absence of *data*, or precise and determinate facts, has resorted to conjectures and inferences, which, for the reason that they are not supported by any proof, scarcely deserve notice. Of this character are those which constitute this charge; and in it, as in the rest, all that does not suit the purposes of the author, is kept silent. In effect, the *Chargé*

d’Affaires adverts to the wholly casual and accidental circumstance of the detention of the vessels in the Malvinas having commenced shortly after the death of Mr. Forbes in this city ; but he entirely overlooks the fact that in November 1830, and in January and May 1831, that is to say, during the life of Mr. Forbes, these very same vessels were warned that if they continued fishing within my jurisdiction, they would be confiscated together with their cargoes. If the circumstance of the detention of the vessels and the demise of Mr. Forbes having been coetaneous had not been a mere casualty,—if it were certain that the apprehension that these depredations might rouse him from his apathy, was what kept me back from practising them during his life, it would also have made me abstain from giving those warnings: for, if the act of capturing those vessels was unlawful, so was that of notifying them that such capture would take place. I caused the circular containing that notification to be published in the journals of this city entitled the *Gaceta Mercantil* and *British Packet*, in October 1830. He who dreads that his actions be known, never avows publicly and with anticipation his intention of performing them. Above all, it would have been a miserable puerility in me to wait, as the Chargé d’Affaires says, till there should be no Representative of the United States in Buenos Ayres, in order to commit my atrocities in the Malvinas ; inasmuch as, although Mr. Forbes should be wanting, there would not fail to be some one to substitute him, and the government of the United States would not fail to be acquainted with them and remonstrate thereon. The present accusations which are directed against me prove the correctness of this remark. But what is most singular and extraordinary, Excellent Sir, is, that the Chargé d’Affaires should affirm that I intentionally captured the vessels at a time when there was no one in this city to remonstrate against it, when, in the next line, he assures that I, as having resided in the United States, know that “no distance could smother the voice of just complaint of American seamenthat its echo would have traversed the wide expanse of the ocean-waters which roll between the two hemispheres. . . .that the government of the United States will always cause its flag to be respected, whether floating beneath the constellations of the North or the South,” &c. &c. &c. How then could he imagine that I, being aware of all this, could commit the folly of endeavoring to conceal by such stupid means my depredations and my tyrannic acts ?

Had I confined myself, he adds, to capturing the vessels and bringing them to trial, I would have acted within the limits of my duty. And what else have I done, Excellent Sir ? The imprisonment of various individuals and the sending the “Superior” to the southward, were, as I have already stated, acts at once just,

necessary, and even beneficial to the Americans themselves. But if the Chargé means to say by this that I ought to have limited myself to the mere capture of the vessels, and that I ought not, as governor, to adopt any measures of police and security, even when I saw the colony in evident danger; that neither ought I, as Director of a colony, to enter into mercantile speculations, he doubtless forgets the primary rights and duties of a government, as he also forgets that in my character of Director I could undertake commercial operations. The imprisonment, contracts, and other measures resorted to subsequently to the capture of the vessels, were necessary consequences of the bad conduct of Davison, likewise subsequent to the said capture. But with respect to the vessels, I did no more than what the Chargé d'Affaires says I ought to have done. I did not confiscate them; I only captured and detained them, sending them for trial to Buenos Ayres, where an American consul resided who would take cognizance of the business, and besides, I brought here Capt. Davison, who, according to the contract, was to answer on the trial for both vessels. This is the way in which I acted. Unfortunately Davison absconded during the trial, setting at nought the laws of the country, and violating his own word of honor; and the consul, Mr. Slacum, allowing himself to be carried away inconsiderately, was wanting in respect towards Your Excellency, exceeded his authority, and wished to give the character of a national insult to that which was no more than a strictly private affair,—an affair of contraband—and with exaggerated and false reports, he has precipitated his government into very disagreeable discussions. The Chargé d'Affaires is greatly mistaken when he affirms that my nomination was during two years a dead letter to the Americans. It was not so. When I returned to Malvinas with the title of governor, and with the special charge to cause the laws relative to the fishery to be respected, my first care was to make known the prohibition to all the vessels, American or not American, accustomed to occupy themselves in fishing. True it is, that prior to my appointment as governor, and when I was only the private director of a colony, I made known to them the same prohibition: and that, consequently, without the necessity of repeating it, I could legally capture the Harriet and Superior, in 1829. But I did not choose to do so. I determined to give them a second and a solemn warning in my character of governor, and I suffered them to depart freely, taking with them the produce of their fishery. And is it possible that this conduct, in every respect frank, generous and beneficial to the North Americans, should now serve as a pretext for accusing me of having allowed my appointment to remain a dead letter? If, in the act of receiving it, and, without waiting for a second intimation, I had put in execution the duty imposed upon me, and had

captured the vessels, I should be now accused of injustice, precipitation and an infraction of the *usages of nations*. But, actuated by delicacy and scrupulosity, I declined exercising the powers I was invested with; and then, on accusing me for enforcing them, they very singularly accuse me for not having exercised them earlier. I do not understand this rare mode of appreciating the actions of men.

If there be any decisive fact in this memorable question—if there be any which evidently proves the justice with which I made that official intimation, and consequently the justice with which I carried it into effect when the moment arrived for so doing, it is the tacit consent and constant deference which the Honorable Mr. Forbes paid to it, as well as to the decree of my appointment. To attempt to cause it to be believed in Buenos Ayres that this conduct of his was the effect of apathy, is wantonly to throw discredit on a venerable tomb. Your Excellency and all Buenos Ayres know from many years' experience, the integrity and the zeal of that illustrious diplomatist; you know, that, guided by principles of the strictest justice, he always supported the interests with which he was charged; and that in his copious official correspondence, he never resorted to adulation, nor was he ever wanting in the respect due to the government of this country. It was not apathy—no, it was the firm conviction he felt of the needlessness of a protest, and of the right which this country had to the Malvinas, which caused him to view with respectful silence, not only the decree of the 10th of June, and my circular alluded to, but likewise many anterior acts of dominion exercised by this Republic over those islands.

The Chargé d'Affaires says that the decree in question was prejudicial to the interests of the U. S. This may be, but Mr. Forbes well knew that utility which may sometimes regulate the actions of an individual, was never a just reason for not acknowledging the rights of others—he knew, that though the decree might be prejudicial to particular interests, this did not prove the want of right to promulgate it. Prejudicial in the highest degree to the general commerce of nations was the prohibition imposed by Spain of trading with her colonies; but no nation ever dared to call in question the right she had to impose it.

For the rest, if the government of the U. S. was not officially informed of this decree, I am ignorant of the reason why its representative here should have omitted communicating it. Further on I will revert to this point: for the present I will only remark that if this be said as a charge against the government of this country, the Chargé d'Affaires knows or ought to know that the government cannot be taxed with having proceeded in this affair by surprise or in the dark. To publish by the press the decree establishing a go-

vernor in the Malvinæ, and that too in a city in which there reside the representatives of several nations, is undoubtedly to proceed in the most frank and public manner that is known. Besides, no principle of the law of nations obliged the government of Buenos Ayres to officially inform any nation of a measure essentially economical and administrative. The independence and dignity of States would be chimerical, if, for every establishment they might propose forming on their coasts or in their dominions, and for every prohibitory law they might think proper to dictate thereon, it were necessary for them to give official notice, and wait for the consent of foreign Governments. If England should resolve to adopt a similar measure respecting any establishment she may raise upon her desert coasts of the Labrador, will she give previous official notice of it to the government of the U. S.?

Such, Excellent Sir, are the charges—such the exculpations.—I have concluded the refutation of the accusations which are directed against me, and notwithstanding Your Excellency's injunction to express myself diffusely, I omit many observations and many details, because I am convinced that in the discussion of arduous affairs, every trifle which is not absolutely necessary, only serves to complicate them still more, and to divert the attention from the only points to which it should be confined. Perhaps this has been the object of the *Chargé d'Affaires* on opening the negociation with a long list of charges—that is, to divert Your Excellency from those which with so much justice you might bring forward.

But I must not commit to silence certain observations which this affair upon the whole, calls for, and which could not have a place in the simple and dry analysis of facts to which I have hitherto limited myself.

First—If the consciousness of perfect innocence is not fallacious, I think that every impartial person will form an opinion decidedly favorable and honorable to my person. To be fully convinced of the justice of my proceedings, it is necessary not to lose sight for an instant of one powerful consideration. In the common course of events there are actions, which, viewed in a false light, and shaded with a few cunning strokes of the pencil, appear criminal or faulty, but which, if presented with impartiality, and if sincerity at the same time show the special circumstances in which the author of them was placed, lose their deformity and appear what they really are—acts that are necessary, and, as such, just. This is now the case with respect to the loud accusation founded on the voyage of the *Superior*, the confinement of certain men, &c. &c. These acts are brought forward with ostentation, but nothing is said as to who was the cause of them, or of the incidents which preceded and accompanied them. To depart, in difficult cases, from the rules of action adhered to in ordinary events, is fully justified by a sove-

reign law—necessity. This is an universal principle, and professed by the Chargé d’Affaires himself.

Your Excellency will be pleased to remark that part of his note, in which, speaking incidentally and lightly of the criminal conduct of the captain of the *Lexington*, instead of reprobating an aggression which will be an indelible stain on the American flag, he expresses himself as follows: “A naval officer of sufficient energy and patriotism to defend and protect those rights on his own responsibility.” On his own responsibility! And why did he take it on himself? Doubtless because he thought necessity authorised him to do so, and that the circumstances of the case would not allow him time to ask for and receive instructions from his government, which, as is stated in the message to Congress, had only ordered him to afford legal protection to the commerce of American citizens. Hence it appears, that, according to the doctrine of the Chargé d’Affaires himself, circumstances authorize actions, which, in ordinary cases, would be very reprehensible; and even authorize a subaltern not only to swerve from, but even openly to break the positive orders of his government. How, then, can they deny to me this same right of acting according to circumstances? The captain of the *Lexington* was not forced to this act by circumstances—the evil he wished to prevent was already done, neither could he repair it with an act of piracy; he rather rendered the cause of his fellow-citizens worse. Notwithstanding all this, the Chargé d’Affaires approves and even eulogizes a scandalous act, which none but the most extraordinary circumstances could in any way palliate. And when I, in circumstances really extraordinary and urgent, adopted measures a hundred times less ruinous, a hundred times less noisy, a hundred times less cruel, I am to be called a wretch, a pillager, an oppressor! Circumstances are to authorize the commander of a vessel, on his own responsibility, to resort to the most criminal and unnecessary measures for the protection of American citizens; and shall they not authorize the governor of a place, on his responsibility, to have recourse to measures customary in such cases, and absolutely necessary to the primary object of preserving order and furthering the interests of the establishment? It would appear that in the captain of the *Lexington* that is *energy and patriotism*, which all civilized people would denominate an act of piracy:—and in the governor of Malvinas, to put down conspiracies, to curb the authors of them, to remove them with their own free consent, and to attend to the commercial interests of a colony, for the benefit, and to the satisfaction even of countrymen of this same commander, is to commit robbery, atrocity, oppression and violence! If men are not to respect a principle common to all, and which regulates the actions of all, the examination of these actions will always be arbitrary, and the esti-

mation of them uncertain; and that which is termed justice will be only a moveable shadow, which will appear under the divers forms which the interests or the passions of individuals may give to it.

Second,—In the long series of incidents which the Chargé d’Affaires has agglomerated, not one is to be found which is not either curtailed or disfigured. In like manner, he relates them without deigning to bring forward the proofs which have induced him to give credence to them. Who has supplied him with intelligence relative to them? The desire to convince by which (if, by no consideration, of a higher order,) he ought to be animated, should induce him to manifest it. If the delinquents themselves, (and it is not possible it could be any others,) or those persons who are interested in this business, he can hardly be possessed of that moral conviction which could alone justify the positive manner in which he comes forward. On the contrary, as far as I am concerned, besides having proved, in the papers referred to, a great part of the facts here stated, with indestructible documents, and by individuals of all nations, even Americans—individuals who have nothing either to hope or fear from me,—I am moreover ready, Excellent Sir, to prove in the same manner all the other particulars I have now added. But even waiving all this, Your Excellency can proceed in this business on a sure basis; which is, that, in the whole history of this affair, the Chargé d’Affaires cannot bring forward a single act, as transcendental as it is criminal, and as criminal as it is undeniable, whilst Your Excellency can with the greatest security cite a fact of this nature—the outrage committed by the Lexington. Yes, this scandalous aggression, which the Chargé d’Affaires, who is so extremely zealous of the *usages of nations* as to consider as an infraction of them, an oath administered in a contract, strangely denominates an act of *energy and patriotism*.

Third,—That a diplomatic envoy, yielding to the imperious voice of duty, sustain with energy the interests of his nation—that he, in the excess of his zeal, so far forgets himself as to use offensive expressions, which the customs of nations have justly proscribed,—in all this there is, doubtless, nothing uncommon. But that, when a private individual is one of the principal objects of a negotiation, the Representative of a prudent and just nation should descend so low as unnecessarily to heap unmerited insults on that individual, which extend even to the government of the country in which he resides; this, although not new in the history of diplomacy, is truly reprehensible and fraught with evil consequences. The Chargé d’Affaires, occupying a position unassailable to me, and to which I cannot ascend to demand from him a legal satisfaction, borne away by his zeal has thought himself authorised to term me a robber, a wretch, an oppressor and a pirate. If it be

possible, I demand a formal trial, where my adversaries may produce their proofs, and bring forward the affidavits which I am aware they have taken from the crew of the *Elbe*, the fugitive *Davison*, and others ; but without concealing any of them. This ought to be done ; and if my adversaries will not accede to it, they owe me a solemn reparation. I detained these vessels, Excellent Sir, in fulfilment of the duty which had been imposed on me. I am a public officer of the State—if I am insulted for my official conduct, the insult falls likewise on the government which prescribed it. As a public officer, as a citizen, as a man, I have a right to preserve my honor, and if I am deprived of demanding personally the reparation due it, I consider that Your Excellency is bound to do so, and to demand from the government of the United States full satisfaction for the insults heaped on me by its Representative.—Your Excellency and the dignity of the country over which you preside, are compromised in this. When the *Chargé d’Affaires* was still in the United States, he might, from a want of information on the subject, think that my title of governor was usurped or apocryphal ; but after his arrival in this capital he knew, or he ought to have ascertained, that it was real ; and that the stage of the business was that the vessels had been declared good prizes by the competent tribunal of this country : he therefore knew that in speaking of me, he spoke likewise of the authorities of the country who directed my acts, or who authorized them. Consequently, if I am a pillager and am a pirate, so also is the tribunal—so also is the government itself.

Fourth,—In my individual opinion, Excellent Sir, it is evident that the *Chargé d’Affaires* wanders from the primary and essential object of his mission. Not having read his instructions, I judge from other data, &c. It is well known that His Excellency the President of the United States, in his message to Congress dated 5th of last December, in treating of the affair of the *Malvinas*, expresses himself in the following terms : “ I will, without delay, send a Minister charged to investigate the nature of the occurrences, and of the claim if there be any, of the Argentine government to those islands.” This was just and rational ; this was decorous, and worthy of a discreet government. The President, informed of what had taken place, says to the legislative body : “ prior to coming to a definite resolution, it is necessary to be fully informed, as well with regard to what has occurred, as to the foundation of the right which the Argentine government claims to those islands ; and for this precise object, a *Chargé d’Affaires* shall be sent there.” As there is not the least motive for supposing that the government wished to deceive the congress, and infringe public faith, we must conclude that the only, or at least the primary object of the mission of Mr. Baylies, was to enquire into those particulars. Con-

sequently it was to be expected that his first step in Buenos Ayres, would be to demand from Your Excellency a detailed account of the occurrences at the Malvinas; and an exposition of the grounds on which this government founded its right to these islands.—Should it result from this enquiry that the U. S. had cause for remonstrance or complaint relative to either of the two points, then was he to remonstrate or complain. This is what was to be expected from the tenor of the message; and although it had not announced it, this is the course which reason should have dictated.

Who can doubt that prior to remonstrating or complaining against an action, or a right, it is indispensable to enquire into, and obtain the necessary information relative to it? With what astonishment then, must the very opposite conduct of the Chargé d’Affaires be viewed! Instead of investigating and examining into the business, he opens the negociation with demands and accusations. If he assert that prior to doing so he had acquired the necessary knowledge; this will prove more clearly the necessity he is under of naming the persons from whom he received his information.—But be they who they may, it appears to me that his government has not sent him to Buenos Ayres to obtain this intelligence from simple individuals. If this was the only object, the sending a Minister was unnecessary; as prior to the arrival here of Mr. Baylies, the American government was already in possession of these same accounts, given by persons under the influence of resentment. It sent him in order, that, proceeding according to the practice of nations, he should require *from the Government of Buenos Ayres* information respecting the two points in question. But he, giving full credit to accounts, the major part of which are probably got up here by persons of the character before expressed, without any previous investigation, without calling for any explanation from Your Excellency, as it was natural and expedient he should do, commences the negociation by laying down as a fact what he was sent here to investigate, and fulminating an accusation, in which, as I have already remarked, he comprehends the authorities of the country. My astonishment is increased when I hear (as has been publicly stated for some days past in this city,) that after the note of the 20th of June he has addressed another to Your Excellency, in which he states that the report called for from me will be useless, as I have already confessed I detained the said vessels, and it is notorious that the Harriet is still in this port. This is to wish every thing to be believed which suits his purposes, setting aside the enquiry whether or not the detention was just. If the Chargé d’Affaires does not require the information contained in my report, Your Excellency may have occasion for it. Nevertheless, it is the Chargé d’Affaires who stands most in need of it, since he has come here to *enquire into the nature of that affair*, and consequently

the report is conformable to the object of his mission. Above all,—I am the party accused, and it would be the first time, that, even in private affairs, the strange doctrine was advanced that it was useless to hear the accused party. How many errors are here committed at the very opening of the negociation! Can the just government of the United States approve this conduct, and these strange principles? I doubt it. And must I not believe that the Chargé d’Affaires has entirely mistaken the true object of his mission?

Fifth,—An anticipated declaration, which I read in the Chargé d’Affaires’ note, confirms me in my opinion. The U. S. have no acknowledged right to the Malvinas. Thus it is that the President alleges none in the message, nor does Mr. Baylies allege any, in his note, but limits himself to lay down as a fact that the fishing business in the Malvinas is lawful, and that this Republic cannot prohibit it; that is, to lay down as a fact, the very same thing which he comes to enquire into. But to return to the message—to this paramount document which the Chargé d’Affaires cannot deny. I will send a Minister, it says, to enquire into the nature of the claims of Buenos Ayres to these islands. This is not the language of one who is conscious of being possessed of a right—it is that of the prudent man who doubts, and wishes to be informed, in order to determine afterwards.

Now, then, the Chargé d’Affaires from the first communication which he addressed to Your Excellency, solemnly affirms, that, “he is authorised to declare that his government utterly denies the existence of any right in this Republic to interrupt, molest, detain, or capture any vessels belonging to citizens of the U. S. of America, or any persons being citizens of those States, engaged in taking seals or whales, or any species of fish or marine animal, on any of the shores or lands of the Malvinas, Tierra del Fuego, Cape Horn, or any of the adjacent islands in the Atlantic Ocean.” The Chargé d’Affaires does not adduce one single reason to justify such an extraordinary declaration. Now I, for the reason that I am as Mr. Baylies says, perfectly acquainted with the institutions of the U. S., and know the character which their government sustains for its justness, cannot bring myself to believe that, without a previous examination of that right, a premature and absolute denial thereof, is really the expression of its sentiments. It is true that its Envoy so avers; but it is no less true, that the President stated no such thing in his message, but that he would send out a Minister—not for the purpose of roundly denying the right of this Republic without giving any reason therefor—but, solely for the purpose of examining into the right alleged: and there is a great difference between the examination of a doubtful fact, and the adoption of a determination regarding it. My reason revolts, Ex-

cellent Sir, at the terrible idea that such should be the sentiments of a government I venerate; for indeed, if the decided resolution of that government were to *utterly deny* the incontrovertible rights of this Republic, to what end was the *enquiry* of which the message spoke?—to what end was the useless expense of sending a Minister to pronounce a simple *nego*, which might sooner and more easily have been said in a note? But if, as it is to be inferred from the message, all that the government of the U. S. wished, was to inform itself thoroughly, how can it be believed that before doing this, before instituting an enquiry, before giving a hearing, it should authoritatively pronounce an absolute and unjustified negative? Does it not know that in so doing it would be committing an injustice? Sir, if unfortunately this were true—if this extravagant language were really that of the President, all civilized nations would immediately recognize in it the despotic language of force,—they would look for and no longer find the principles of strict justice which always regulated the resolves of the American cabinet; for that language, translated into the idiom of reason, signifies—“I will not examine the rights adduced by a nation as independent as my own: however sacred they may be, I deny them: I disregard the prohibitions which it may dictate in exercise of its sovereignty: my disregard proceeds from the knowledge of my strength, which I proclaim as the supreme regulator of international acts and rights.” It would be insulting the public reason to believe the government of the U. S. possessed of ideas so destructive of the most solemn principles, and of the independence of nations. Nevertheless the Chargé d’Affaires affirms the existence of such sentiments. And am I not to believe, I repeat, that he has entirely mistaken the objects of his mission?

These are, Sir, in compendium, the observations which rush upon the mind on view of this singular negociation—a negociation opened with unbecoming insults—devoid of every kind of proof—diverted from its primitive object—commenced where it ought to conclude, and in which it is impossible to distinguish the beginning from the *ultimatum* pronounced upon it.

But, having concluded my report in the part which was enjoined me, may I be allowed, as a citizen of the Republic, and as directly interested in the results of this important controversy, to manifest my opinion and the foundation whereon it rests, with respect to the great question which is about to be submitted to the imposing tribunal of the civilized nations? I speak of the question of the right of the Argentine Republic to the Malvina Islands and their adjacencies, and to the coasts of the continent as far as Cape Horn. If the government of the U. S., or any other, deny the existence of that right, on Your Excellency devolves the easy duty of demonstrating it to the world. Your Excellency will doubtless do so, and perhaps

will find of some use the information which I proceed to communicate, moved principally by the strange denial which the *Chargé d’Affaires* has made of the aforesaid right.

Let us first establish general principles and ideas, which applied afterwards to facts, will give us the solution of the difficulty it is endeavored to raise.

Certainly if we were only to attend to the practices observed by covetous Europe, in former hapless ages, in arrogating to herself the sovereignty of countries whether inhabited or desert, it would be impossible to fix a universal rule respecting the means by which nations acquire dominion. Those practices have varied according to circumstances; and the shameful history of the ultramarine establishments of Europe, both in the Eastern and Western regions, presents no other authority for her rights than the voluble one of predominant interests in combination with the power of sustaining them. Nor has the odious right of conquest justified the appropriation of a great part of the most valuable countries; for, in justice, there is no real conquest of a country without previous war with its inhabitants—a war at once just and duly waged; but the Europeans have never hesitated to claim, by right of conquest, immense inhabited and inoffensive countries, from the moment they set their feet on them, or raised a cross or hoisted a flag. What right had the Portuguese, in a time of peace, to make themselves masters of the East Indies? What the Dutch to eject them from these possessions? What right had France and the nations of the Baltic to divide amongst themselves the spoils of their ancient grandeur? What right had England to make herself almost exclusive mistress of those dominions? Interest and force—nothing else; and at a time when the civilized world was reduced to the very nations which broke the law of nations, the general silence or the applause of cupidity, succeeded almost in legitimating those means of acquiring dominion, which in process of time will perhaps inspire horror.

Europe did not follow any other measure in the usurpation, (which she gilded with the name of colonization,) of the spacious regions of the New World. In the complete subversion which the eternal principles of the law of nations had undergone, by the substitution of will and power for justice and reason, the European States rushed successively upon the pacific neighboring territories. The first who arrived, called himself master—but his title was nominal, whilst he did not write it with his sword, or another did not erase it with his. Spain, Portugal and England were those who shared the most in the partition of a world. Their own interest taught them the necessity of mutually respecting their acquisitions. Hence arose certain rules which they termed general, and which were successively established, either in a tacit manner, or by con-

ventions which they celebrated between themselves, or by declarations of each government, made as the cases occurred. Forgetting entirely the origin and the mode of the acquisition; the acquisition was only considered as a fact, and this fact as a right. But, notwithstanding the conventions and the rights which they mutually recognized, restless covetousness was burning in all of them with the additional force which was communicated to it by the sight of what others possessed, and the unquenchable desire of possessing more. Hence so many aggressions, so many partial usurpations. An enterprising nation possessed itself of a great part of Brazil; and this usurpation from Portugal, was viewed by Europe as a right, which in its turn disappeared by force, leaving scarcely the vestige, which is now perceptible in Guayana. The English, French and Dutch, either avowedly or under pretexts, endeavored at various times to establish themselves in, and make themselves masters of many points, more or less important, belonging to the extensive possessions of Castile, especially in the islands and Eastern coasts of the continent. The rich West India Islands presented an abridged representation of the conduct and system of acquiring pursued by Europe. He who seized on an island was its owner, till he was in his turn ejected, in order to become again possessor; and that important archipelago, was throughout, the theatre of a multitude of sovereignties, many of which were as varied and as moveable as the waters which surround them.

And in the uncertain legislation which this tumultuous series of reciprocal usurpations formed, can we perchance find the true rules of the modes by which nations acquire dominion? No: we must look for them in the immutable principles of the law of nations.—This law was infringed by those appropriations; but it had preceded them, and therefore condemned them. It existed at the time of their execution, and in despite of them, and it now exists—now that the nations, without repenting of their former acts, wish at least, from respect to public opinion, to appear as regulating by it their present conduct.

According to this universal code, I unhesitatingly believe—

1st,—That the mere casual discovery of an uninhabited country, or of one inhabited by people whom it is easy to subject or destroy, does not confer dominion over it.

2d,—That a discovery intentionally made in virtue of a determinate project or enterprize, confers it, provided this enterprize is carried into effect by the actual settlement of the discoverers in the country and their remaining therein; but not by their contenting themselves with a momentary possession, nor with leaving signs, which after the possession is concluded, are of no avail—such as flags, plates, inscriptions, coins, &c.

3d,—That the means of acquiring, which Puffendorf calls originary, that is, the discovery and the occupation, or actual and permanent possession, with intention to retain,—are not the only ones. A nation can besides acquire over a territory a dominion which belonged to another, either by inheritance, by cession, by sale, by exchange, or by treaty.

4th,—That the strongest and clearest of these rights, is that which proceeds from the existence of another, as in the cases of cession, exchange, &c., in which the right of one nation passes to another, whether this right may have originated in possession, or in any other manner.

5th,—That this most valid title may, by being united to others, become still stronger, as in the case of a nation making the first discovery of a country, and taking actual possession of it; and another, which has pretensions to it, ceding the rights it may have, in favor of the former.

6th,—That the nation which, in any manner, acquires dominion, over a district, and abandons it with the intention to return, manifested by facts, such as leaving a part of its establishment, letting the settlements remain standing, or leaving other things of which it stood in need, and might have taken away, &c. &c., still preserves that dominion.

7th,—That when a nation acquires by any of the aforesaid means a territory washed by the sea, it acquires *ipso facto* the dominion over the coasts, ports, islands, gulfs, fisheries, and all their adjacencies.

8th,—That the territory or jurisdiction of a State is all that space over which the action of its government extends.

The effects of dominion, considered, not on the whole, but only in that part which is applicable to the present question, are :

1st,—The power of enjoying and disposing of all the advantages which can be derived from its jurisdiction.

2d,—The power of withholding or conceding this enjoyment.

3d,—The power of punishing the infringers of the regulations which may be adopted with regard to this enjoyment, which power is inherent to every prohibitive right, as, without it, the right would be illusory.

This dominion once acquired, is lost :

1st,—By the prevalence of foreign force, or by conquest.

2d,—By exchange, sale, or express and definite cession, but not by the simple non-use of this or that district, or of this or that advantage; nor by the toleration or tacit permission to a nation of (for example,) the use of a fishery; for in these cases it is always presumed that the nation to which the dominion belongs, reserves its right.

8d.—By dereliction or complete abandonment of the territory with the intention of not returning to it, or when the intention of returning does not go beyond a mental resolve, or is not evinced by deeds; in which cases it passes *pro derelicto* to the first who may occupy it; but this does not take place when the abandonment is made in consequence of some extraordinary cause, or from necessity, or if it only consists in leaving uncultivated, desert, or undefended some place for a short or long period of time.

The known wisdom of the Chargé d’Affaires will not fail to agree in the correctness of these principles, which, founded in reason, uniformly admitted and generally observed, constitute an essential part of the common code of nations.

To apply them more clearly and suitably, we will enter on the irksome but necessary task of sketching the principal outlines of the history of the Malvinas, and the eastern coast of this continent to the south of the River Plate.

We will first treat of the coast, as being the part which offers the least difficulties.

It is entirely beyond dispute, that since the year 1519, and prior to the discovery of the River Plate, the Portuguese Magellan, in the service of Spain, and under the reign of Charles V., discovered, nearly at the farthest point of the continent, the strait which now bears his name. It is equally indisputable that eight years afterwards, Loaiza, likewise in the service of Spain, was the first who traversed that strait; also, that to them succeeded other Spanish navigators; among them, Alcozaba in 1535, Villalobos in 1549, &c.; it is equally so, that these anterior discoveries and labors of the Spaniards were what excited and aided the later undertakings of other navigators, both foreigners and natives; counting among the former, the Englishmen Drake, Cavendish and Hawkins, in 1577, 1592, and 1593; and the Dutchmen Noort in 1599, Spilbert in 1615, Moore in 1619, &c.; and among the latter, Valdez in 1581, Nadal in 1618, &c. The English nation pretends to attribute to Drake the discovery of Cape Horn in 1578, and Holland to the Dutchman Lemaire in 1616. The latter appears the most natural, as well from the etymology of the word Hornos (from Hoorn, a town in Holland,) as from the fact that the celebrated English navigator Cook, even with the knowledge possessed in his time, that is 150 years afterwards, could form no exact idea of the Cape. But be this as it may; that which appears beyond doubt, is, that the first who doubled the Cape was not an Englishman, but Lemaire. It is equally certain that no other nation than Spain ever formed establishments on any part of this extensive coast: nor was there, in the beginning, any motive or interest for going to inhabit those misty and inclement regions.

On the contrary, from the moment that Spain took possession of the River Plate, she had not only a motive, an interest—she was under the absolute necessity of taking and securing the whole extent of the coast; as the primary object of her financial and colonial policy was always to keep the foreigner aloof from her dominions, in order to avoid a clandestine commerce. She, in effect, took possession of the coast; but I shall not dilate much on this, nor on the large iron crosses which it is notorious she caused to be fixed on the whole line of coast of Patagonia and Tierra del Fuego; I shall not, I repeat, dilate on this, as her dominion was supported in actual, uninterrupted and expensive occupation, which was respected by foreign nations. On examining the public archives of this capital, it is found that the whole coast was divided into three districts: the first, from Cape St. Antonio to Santa Elena; the second, from thence to the strait; and from the strait onwards, including the island of *Los Estados*, and adjacencies, belonging to the district of the Malvinas, which constituted the third. It will likewise be seen that she formed settlements in Rio Negro, Puerto Deseado, San Julian, San José, and Santa Cruz, the first of which still exists.

The ever watchful cabinet of Spain paid particular attention to these establishments. On the 12th of March 1780 she notified the remission of various Castilian, Gallician and Asturian families, as settlers. On the 9th of September 1781 she concentrated the government of the coast in D. Francisco Viedma, naming him superintendant of the establishments from Cape San Antonio to Santa Elena, placing under his dependence those of San José, San Julian and Port Deseado; and marking out as the jurisdiction of the superintendant of San Julian all the space comprised from Santa Elena to the strait of Magellan. On all these points she constructed and preserved depôts for convicts and military detachments, the maintenance of which cost many dollars to the treasury of Buenos Ayres. By a royal order of the 28th of September 1781, six vessels were permanently destined to these establishments, for which vessels the said treasury had to pay the sum of \$83,509; and such was the constant care for the preservation of these settlements, notwithstanding the great expense they occasioned, that, San José having been abandoned by the greater part of its inhabitants, owing to a scarcity of provisions, a royal order was signed in Pardo on the 4th of March 1780, conceding a premium to the few soldiers who had not abandoned the place, and pardoning the convicts who remained. By another, dated in San Lorenzo, on the 22nd of November 1795, the king approved all the measures which had been successively proposed to him by two viceroys, the object of which was to preserve, foment, and add to the establishments on the coast, *in order that the English might not establish themselves there.*

Spain did not content herself with the mere permanent occupation of all the coasts; she caused her subjects to enter into the enjoyment of the advantages accruing therefrom. With this view, she in 1790 established a grand maritime company, the direction of which should be in Madrid, and the principal factory in Puerto Deseado. Its object was the settlement and improvement of the coast, the curing of fish, and the whale and seal-fisheries. Twelve months afterwards, various privileges were conceded to the company. By a royal order of the 15th September 1792, a further concession was made to it, allowing it to extend its fishery to the Malvinas, and ordering the convicts who were there to be employed in this occupation. By another of the 16th of February 1791, it was already ordained that the treasury of Buenos Ayres should lend assistance to D. Juan Muñoz, for sustaining the establishment of Puerto Deseado, as the king was determined, even should the state of the company not permit to incur the expense, that the establishment be supported at all costs, were it only as a depôt for convicts. By another of the 17th of April 1798, it was ordered that the treasury of Buenos Ayres assist the company with \$20,000 annually. Finally, by another of the 13th November 1799, it was ordained, among other things, that the \$20,000 be furnished every year without discount or delay; that the exclusive right to the fisheries should belong to the company; and that the company should from that time be considered as a private property of the royal patrimony.

It is unnecessary to state that this company, though apparently it did not succeed, entered on the full and undisputed enjoyment of its rights and privileges, without any nation calling them in question. On the contrary, all countries respected them; and on the few occasions on which foreign vessels touched at their establishments, they acknowledged the jurisdiction of the company, and acceded without repugnance to its regulations. On the 2d of June 1793, the commandant of Puerto Deseado, D. Miguel Resio, gave notice of the arrival at that place of the two American vessels "Ark" and "Governor Brown," for the purpose of fishing. They were ordered to abstain from doing so, and to set sail immediately; when they excused themselves under pretext that they only wished to re-establish the health of their crews, attacked by scurvy, and not to fish in that port, or in its neighborhood; adding that they well knew they were not authorized to do so, on account of the agreement entered into between Spain and England. In like manner, in 1803, an English brig appeared off Puerto Deseado, and after standing off and on several times, she was not only reprimanded for navigating in those seas, but was likewise deprived of some seal-skins she had taken on the coast. On the 4th of April 1802, a shallop belonging to the American ship Diana, cap-

tain Smith, entered Rio Negro for the purpose of taking in water, when the viceroy reprimanded the commander of that place for not having ordered her to retire from those seas. The shallop having returned on the 21st of June in the same year, in quest of assistance for careening the vessel, she was then ordered off, which order she obeyed immediately, and set sail, abandoning her second mate and six seamen.

Thus the dominion of Spain over the whole extent of the coast is founded on its discovery, on the first and exclusive permanent occupation of it, and on continual and repeated acts of sovereignty, exercised under the eye of all nations, without any having called it in question; all, on the contrary, having acknowledged it.

Let us now turn to the Malvina islands. Who was the first discoverer of these islands, is a question the solution of which has never been universally agreed to. There are many widely different opinions with regard to it. This enquiry, however, according to the principles here laid down, is not of itself sufficient to decide on the sovereignty of these islands. But he is deceived who may think that Spain has no pretensions to the discovery of them. It is true that the discovery was casual, and that not even a name was then given to the islands; but of this kind was likewise the discovery which the English attribute to Davies in 1592. To justify this pretension of Spain, I will not cite, as I might do, the assertions of Spanish authors; but rather that of a Frenchman, whose testimony cannot therefore be objected to by other nations; of a Frenchman, who, as the first settler on the Malvinas, had a special motive for enquiring into the matter. Bougainville, in the account of his second voyage to the Malvinas, thus expresses himself. "I am of opinion that the first discovery of them can only be attributed to the celebrated navigator Américo Vesputio, who, in the third voyage which he made for the discovery of America in 1502, run down the north coast of them. It is certain that he did not know whether they formed part of an island, or of the continent; but from the route he followed, from the latitude to which he arrived, and even from the description he gives of the island, it can easily be perceived that it was one of the Malvinas." The *British Naval Chronicle*, of 1809, written by various literary characters, says, that although the first discovery of the Malvinas has been attributed to Davies, it is very probable they were seen by Magellan, and by others who followed him. Spain may therefore lay claim to the discovery.

Not so to the first occupation or settlement. It is not stated by any writer that the islands were colonized before the year 1764. There had been, it is true, projects in contemplation and wishes evinced to take possession of them; but they were never realized. What is said in this respect by an English author (MILLER, *History of the*

Reign of George III.) is worthy of notice. "It was first remarked by Lord Anson, on his return from his famous voyage round the globe in 1744, that the possession of a port to the southward of the Brazils would be of signal service to future navigators for refitting their ships, and providing them with necessaries, previous to their passage through the straits of Magellan, or the doubling Cape Horn; and among other places eligible for this purpose, he specified Falkland Islands. About ten years after, on his lordship's advancement to the head of the admiralty, a plan in conformity to his ideas was on the point of being carried into execution; but strong remonstrances being made against it by the king of Spain under the old pretence of his exclusive right to all the Magellanic regions, the project, though not expressly given up, was suffered to lie dormant."

Some years afterwards, France formed a similar scheme and carried it into execution. According to Pernetz's account, on the 8th September 1763, the ship *Aigle*, carrying 20 guns and 100 men, under the command of M. Guyot, captain of a fireship, and the corvette *Sphynx*, with 14 guns and 40 men, commanded by M. Cleuart, set sail from St. Maloes for the Malvina Islands. On the 4th of February 1764 they entered the great bay of La Soledad, which the English afterwards called Berkley Sound; having disembarked, they ascended a hill, on the summit of which they erected a large wooden cross, (a part of which exists to this day,) and on 17th of February they established themselves by constructing a fort. After having brought cannons on shore and taken possession with a salute of twenty-one guns, in the name of his Most Christian Majesty, M. Nerville was appointed governor.

In Bougainville's work may be seen the sequel of this event—the labors undertaken—the entire absence of traces of former inhabitants, to the degree that the birds appeared to be entirely domesticated—the voyage which he made to France—his return to the colony on the 5th of January 1765—the content in which the colonists lived, &c. &c.

Thus it is evident that the French were the first settlers of those islands, to which sixty years before, when they saw them for the first time and considered themselves the discoverers, they gave the name of *Malouines*, a name which has prevailed more generally than those of *Pepis*, *Falkland*, and others which were likewise given them.

But as soon as Spain received intelligence of this occupation of the islands, she asserted her right to them and they were restored to her. "In February, 1764," says Bougainville, "France had commenced an establishment in the Malvinas. Spain claimed them as a dependency of the continent of South America. The king (of

France) acknowledged her rights, and I received orders to go and deliver our establishment to the Spaniards."

In virtue of that acknowledgment, by a royal order of the 4th of October 1766, D. Felipe Ruiz Puente was appointed governor of the Malvinas; he repaired thither from Montevideo in company with Bougainville, who had arrived at that port. In April of the following year, Bougainville made to Puente a formal and absolute delivery of the establishment, vessels, effects, arms, provisions, &c., the value of which was reimbursed to the French, part in Spain and France, and the rest in Buenos Ayres.

In the meantime the English, (according to *Byron's voyage round the world*.) under the command of Admiral Byron, visited these islands on the 13th of January 1765, and on the 23d took possession of them, under the name of Falkland, after a long time had elapsed since they had borne that of Malouines, and after they had been colonized by the French since the preceding year. Byron declared that all of them belonged to H. B. M., and sailed from thence on the 27th without leaving a hut or a single man. The harbor at which Byron had arrived, had not only been discovered by the French, but it had received from them the name of Port de la Croisade; the English gave it the appellation of Port Egmont.

In 1766, England forgetting that 22 years before she had acknowledged the exclusive dominion of Spain over the Malvinas by desisting from the project of lord Anson, sent an expedition under the command of Capt. Macbride, who formed an establishment in Port Egmont. So far from finding those islands desert, and from being able to ground thereon a right, the English found the French established there since the two preceding years, and had it in contemplation to make use of force. "Capt Macbride, commander of the frigate Jason," says Bougainville, "came to my establishment about the beginning of December of the same year (1766); he pretended that those islands belonged to H. B. M., and threatened to disembark by force, were any resistance offered; he made a visit to the commandant, and set sail the same day."

I must not omit here an observation which Bougainville makes immediately afterwards, as it proves that France acknowledged Spain to be possessed of a right to these islands anterior to the French occupation of them, and consequently anterior to the occupation of them by Macbride. "Such was," he says, "the state of the Malvina Islands when I gave them up to the Spaniards, whose *primitive right* was thus rendered stronger by that which we had undoubtedly acquired by the first occupation."

The governor of the Malvinas, Puente, notified to the viceroy, and he to his court, the establishment of the English in Port Egmont. In the interim, he gave instructions to the commander of the Santa Rosa, in which in virtue of the orders he had r-

ceived from the viceroy, he advised him that if he found there an English settlement, or any English vessels, he should warn them "that they were violating the existing treaties by being in those dominions without the express consent of his Catholic Majesty." These treaties doubtless relate to the acknowledgment of the Spanish dominion, even by the English themselves, in the time of Lord Anson.

Some time afterwards, a force under the command of D. Juan Ignacio Madariaga, sailed from Buenos Ayres against the English. On the 3d of July 1770, accounts were received from Puente, including the despatch of Madariaga, by which it appeared that on the 10th of June he had defeated and taken the English in the port of La Croisade, or Egmont, of which George Tamer was governor; and by the capitulation entered into, the English were to give up all they had there, and were to be permitted to keep their flag hoisted on board the frigate and at the garrison, until they had embarked, which was done.

This news produced an extraordinary excitement in England, and great preparations were made for war with Spain, which cost the nation more than three millions sterling. But on the 2d of January 1771, the dispute was settled by a convention, which was signed in London by Rochfort, and the Spanish ambassador prince Masserano, in which was stipulated the complete restitution of the establishment to the English *in statu quo*; but leaving pending the question as to the right claimed by Spain. We shall afterwards see whether or not this apparently trivial reservation was acted upon by that power.

Spain honestly fulfilled her part of the treaty. The treasury of Buenos Ayres received orders to defray the expense of replacing every thing in Port Egmont, to which the English returned in 1771.

But three years afterwards, the English suddenly and silently abandoned the settlement which had cost them so much. According to the principles laid down, it is of no importance whether or not they left inscriptions there. The fact is, they abandoned the place—they never returned to it; and neither to the court of Spain, to the government of Buenos Ayres, nor to the governor of Malvinas, did they intimate their intention of returning, as it was easy and natural for them to do, had such intention existed; neither did they even inform those authorities of the motives. But what is more extraordinary, not even the English nation was ever informed of them. The Chargé d'Affaires cannot cite a single document in contradiction of any of these assertions.

The mysterious abandonment of Port Egmont, Excellent Sir, is the most remarkable and the most curious incident in the history of the Malvinas; and, before going farther, it is highly important to examine into the nature and causes of this event. The result of

the enquiry will be the conviction that this abandonment completely annihilated the rights, however valid they may have been, which Great Britain had to that part of the islands; and that from that time they reverted to their first origin—the crown of Castile.

What could have caused this extraordinary abandonment?—Could it be fear? No: for the English could have nothing to apprehend after the solemn restitution which had been made to them; neither could England, in the year 1774, stand in awe of Spain. Could it be the inutility of the settlement? No: for the advantages laid down thirty years before by Lord Anson, were even greater at that time, on account of the increase, and greater activity, which had been given, as well to her mercantile shipping in general as to her lucrative commerce with the East-Indies. Was it from economy? So says the *Chargé d’Affaires* of H. B. M., Mr. Parish, doubtless because he had no other motive to adduce in the protest, which, by order of his court, he presented to the government of Buenos Ayres, on the 14th Nov. 1829, on occasion of the decree of the 10th of Nov. 1829, appointing a governor of the islands.

But, sir, to explain that phenomenon in the way in which Mr. Parish explains it, it is necessary to forget the character of the English nation, and entirely to lose sight of her mercantile history. A nation accustomed to make the greatest sacrifices for obtaining and securing every thing that can be of interest to her trade—a government which never resists that which is called for by a majority of its subjects, and whose policy tends principally to the aggrandizement of its commerce—a nation which had shown itself irritated to an extraordinary degree on being despoiled of Port Egmont, and which had not hesitated to expend, in a few months, nearly twenty millions of dollars in warlike preparations on that account—an opulent and enterprising mercantile nation, which had so much occasion for that place, as is proved by the numerous vessels belonging to her, which, from that time up to the present have frequented the islands, either to take in provisions or for objects connected with the fisheries—such a nation, having just obtained pacifically and without expense, the enjoyment of those advantages forever, suddenly to abandon her possessions, solely for the miserable saving of the expense of their support, when merely the produce of the fisheries would more than repay the expenses of the establishment—abandon them from motives of economy, without leaving even a vessel, or a few men, notwithstanding her riches, her numerous navy, and her excessive population—abandon them in silence when she might have spoken openly, and it was so much her interest to do so! This, Excellent Sir, I can say with confidence, is impossible. To render it credible, it would be necessary

they should bring forward proofs and deeds as irrefragable as is this fact, that the English did entirely abandon the Malvinas.

There must, therefore, have existed some other cause; and the fact of concealing it plainly proves that it was not favorable to the pretensions of England. In effect, she agreed to an express treaty—at least there are grounds for believing this, without referring to the archives, a thousand times stronger than any that exist for stating as Mr. Parish did, that the abandonment was only *in consequence of the system of economy at that time adopted by the government of H. B. M.*

The treaty to which I allude had its origin in the year 1771, and by it Port Egmont was restored to the English, with reservation as to the right of Spain. To prove it, I will present the positive assertions of respectable writers; purposely setting aside all those who might be objected to by England, and selecting only English writers. The result of this labor will shew:

1st,—That the abandonment of Port Egmont was complete and absolute, and not, as Mr. Parish asserts, with an intention to return to it—an intention, which, under all circumstances, would have been merely mental, and as secret as the abandonment was public.

2d,—That the following is what gave rise to this abandonment. While treating for the restitution of Port Egmont, England did not disavow the exclusive right of Spain to the islands; as neither had she disavowed it in the time of Lord Anson. But as she could not cede them at that time without augmenting the irritation which existed in the minds of the people, and deeply wounding the national pride, it was agreed to make the restitution on conditions, which should not be expressed; for which purpose was inserted the clause—“*that that act should not affect the question of prior right of sovereignty over the Malvinas.*” In this way the English people were satisfied, and the negotiation was left open, so as afterwards to agree to the total evacuation of Port Egmont.

3d,—That consequently Spain recovered the full enjoyment of her rights over all the Archipelago of the Malvinas.

Miller, in the before-cited work, after relating the excitement produced by the news of the expulsion of the English from Port Egmont, and the agreement by which it was restored, adds that parliament voted an address of thanks to His Majesty's government, for having obtained that accommodation, and to justify it, it was said that the atonement made by Spain was as ample as could be justly required, and that ministers would have been in the highest degree reprehensible, had they involved the nation in a war for the sake of so insignificant an object as the reserved pretensions of Spain to one or two barren spots under a stormy sky in a distant quarter of the globe. This extract, I will remark by the way, shows that the nation attacked the ministry for having consented to

that reservation, either because it apprehended the results thereof, or penetrated into what was kept concealed from it. The protest which nineteen peers of the realm entered, on this occasion, may be referred to on the subject. From these attacks arose that pompous and contradictory justification of the treaty. An address of thanks to the government is voted for having obtained something great; and at the same time an endeavor is made to underrate it by representing the islands as barren, useless, &c. Wherefore was the contradiction? Because it was necessary to prepare the public mind for what was to take place afterwards.

Miller continues: "the possibility of a similar dispute (between England and Spain,) was precluded by the *total evacuation* of that settlement about three years after."

The celebrated oracle of the opposition under the assumed name of JUNIUS, did not allow himself to be deceived; he bitterly criticised the ministry for having admitted that reservation, and penetrating, or knowing, the real state of the case, he said the restoration was *temporary*, and announced as certain to the nation the future cession of the rights of England to the Malvinas. In the edition of his famous letters which I have before me, the English editor remarks on this occasion, that the Spaniards fulfilled their engagement by restoring the establishment, and the English *fulfilled* theirs by abandoning it after such surrender.

Brook's *General Gazeteer*, published in London, says: "In 1770 the Spaniards dislodged the English from Port Egmont—this affair was settled by a convention, and the English regained possession; but in 1774 the settlement was abandoned, and the *islands ceded to Spain.*"

Chapter xxxix. of the *Anecdotes of the life of the Right Hon. William Pitt, &c.*, contains the following: "While lord Rochford was negotiating with prince Maserano, Mr. Stuart Mackenzie was negotiating with Mons. François. At length about an hour before the meeting of parliament, on the 22d of January 1771, a declaration was signed by the Spanish ambassador, under French orders and a French indemnification, for the restitution of Falkland Islands to his Britannic Majesty; *but the important addition, upon which this declaration was obtained, was not mentioned in the declaration.* This condition was, *that the British forces should evacuate Falkland Islands as soon as convenient after they were put in possession of port and fort Egmont.* And the British ministry engaged, as a *pledge of their sincerity* to keep that promise, that they would be the first to disarm.

"During the month of February 1771, the Spanish minister at Madrid hinted to Mr. Harris, the intention of the Spanish court to require of the British ministry *a perfection of engagements, as they were mutually understood.* Mr. Harris' despatch, containing this

hint, was received by the ministry on the 4th of March. Three days afterwards, a Spanish messenger arrived, with orders to prince Maserano, to make a positive demand of the cession of Falkland Islands, to the king of Spain. The Spanish ambassador first communicated his information of these orders to the French ambassador, with a view of knowing whether he would concur with him in making the demand. On the fourteenth they held a conference with lord Rochford on the subject. *His Lordship's answer was consonant to the spirit he had uniformly shewn.* In consequence of this answer, messengers were sent to Paris and Madrid. The reply from France was civil, but mentioned the family compact. The answer from Spain did not reach London till the twentieth of April. In the mean time the ministers held several conferences with Mr. Stuart MacKenzie—the result of the whole was, the English set the example to disarm; and Falkland Islands were totally evacuated and abandoned in a short time afterwards; and have ever since been in the possession of the Spaniards. The British armament cost the nation between three and four millions of money, besides the expense and inconvenience to individuals."

All these facts are confirmed by the testimony of Gumes in his memorial against Forte, Roger and Delpech, who had accused him of jobbing in the public funds.

The before-mentioned *British Naval Chronicle*, after relating that in 1774 the English government ordered Capt. Clayton to evacuate Port Egmont and take away the effects, and that he, on his departure, fixed a lead plate with an inscription saying that the islands belonged to H. B. M., concludes: "but these islands, so pertinaciously claimed by the English, were ceded to Spain."

The *British Encyclopædia* contains the following: "Port Egmont was restored to the English, who again took possession of it, but a short time after, it was abandoned in consequence of a private agreement between the Ministry and the Court of Spain."

These unimpeachable testimonies are sufficient to acquaint us with the nature and motives of that strange, sudden and silent abandonment. We may therefore assert as an unquestionable fact that in 1774, in virtue of a convention, all the rights which England might have had to the Malvinas were surrendered and transferred to the kings of Spain. Here I may repeat the remark that Bougainville makes on the occasion of the former cession by France. "Thus was rendered more secure the primitive right of Spain,"—a right, I may add, recognized by England since the time of lord Anson. Let us now continue the sketch of the history of the Malvinas.

From 1774 onward, Spain was the exclusive mistress of all the islands—no nation disputed her rights—none dared to establish itself in the archipelago—she legislated over it, and exercised with-

out interruption acts of sovereignty, which were respected by foreign countries. I will enumerate some of them. In 1774 she appointed Don Francisco Gil governor of the Malvinas; in 1777, Don Ramon Clairac; in 1784, Don Agustin Figueroa; in June 1790, Don Juan José Elizalde; in February, 1793, Don Pebro Pablo; in 1799, Don Ramon J. Villegas, and in 1805, Don Antonio de la Barra, &c.

Since 1767 she constantly supported, with great sacrifices, the establishment of La Soledad, in which, and in the garrison, vessels, &c., she expended \$150,000 per annum, which sum was supplied mostly by the treasury of Buenos Ayres; but she did not confine herself to an insignificant settlement; she endeavored to promote agriculture, and for this purpose transported thither convicts, cattle, &c., so that in 1784, according to the returns of governor Figueroa, the buildings amounted to 34, the population to 82 persons, including 28 convicts, and the cattle of all kinds to 7,774 head.

In the beginning of 1776, Capt. Juan P. Callejas formally reconnoitred Port Egmont and the adjacent bays; he found the roads covered with grass, the doors of the houses and stores open, the roofs almost entirely fallen in, and some effects scattered on the shore.

Under date of 7th February 1776, the Court sent word that the prince of Masserano had complained to the Cabinet of London of several English vessels having been seen in Port Egmont, *in opposition to the solemn and repeated protestations with which Spain had been assured of the total abandonment of that place.* The British Minister again assured him of the abandonment, adding that he had reason to suspect that vessels belonging to the revolted colonies of North America often went to the islands to fish for whales; on which account the Court of London had it in contemplation to send one or two frigates to expel them. On this occasion the government of Buenos Ayres was desired to cause the government of the Malvinas to again reconnoitre the islands, and if he found any individuals there, to order them off immediately.

On the 9th of August of the same year, 1776, the Court ordained, that, England having already evacuated the establishment she had formed in Malvinas, the government of Buenos Ayres should destine two frigates to cruize in those parts; and on the 26th of September it gave orders to warn the vessels of the English colonies to abstain from frequenting those seas and coasts, as they belonged to the king of Spain.

On the 1st of April 1777, the head pilot of the royal squadron, Don Pablo Siour was commissioned to make a new survey of Port Egmont. In his instructions he was ordered, if he found there any American vessels, to make to them the before-mentioned intima-

tion, as it was no longer under British dominion; and in case he should find there any English vessels, he should make the same intimation to them, and further accuse them of a want of good faith.

In April 1777, the governor of Malvinas received orders from the king to entirely demolish the establishment of Port Egmont, and not to leave a vestige of it remaining. This was afterwards done, and the Spanish government under date of the 8th of February 1781, acknowledged the receipt of the despatch acquainting it with the fulfilment of its instructions.

Spain declared war against Great Britain on the 8th of July 1779, and in the year following the Viceroy of Buenos Ayres received orders to make every sacrifice for sustaining the Malvinas, in order that England might never claim them *pro derelicto*. This was done, and happily, in January 1783, preliminaries of peace between the two nations were agreed on; and the convention celebrated in virtue thereof was communicated to Buenos Ayres.

In March 1787, by order of the Viceroy, Marquis of Loreta, Don Pedro Meza reconnoitred the whole of the Malvinas, and did not find there a single British subject, or a foreigner of any other nation.

By a royal order dated in Aranjuez on the 28th of April 1788, instructions were given to foment the fisheries in the islands, and to reconnoitre their establishments, *in order not to allow any English to remain, either on Falkland or any other part.*

On the 29th of October 1790, a treaty or convention was entered into in San Lorenzo, between the governments of Spain and England, for settling various disputed points relative to fishing, navigation and commerce in the Pacific and South seas; and in the same place the ratifications were exchanged on the 22d November following. By this treaty, after regulating various other points, it was agreed in article 4, that British subjects should not fish or navigate in the South seas, within the distance of ten maritime leagues of any part of the coasts then occupied by Spain. In article 6, it was stipulated that in future the subjects of both nations should be prohibited from forming any establishment to the south of those parts of the coasts and islands adjacent, which were then occupied by Spain, but that they should be allowed to erect temporary huts for the object of the fisheries.

On the 22d November 1791, Elizalde, governor of the Malvinas, with a frigate and a brig, was commissioned to *reconnoitre those parts in the vicinity of Cape Horn and Tierra del Fuego, in which the English might have established themselves, and to oblige them to fulfil the treaties of 1790.* In the instructions he is told, among other things, that, "according to the literal tenor of article 6, the English should not be allowed to fish or to construct huts on coasts

which, although desert, may be situated to the North of territories occupied by Spain, such as the coasts of Puerto Deseado, those of San José, and even the bay of San Julian, and other places in which we may have had occupation or settlements, or which may be accessory to districts actually occupied."

With respect to the constant and strict prohibition from fishing, or even navigating the Malvinas, imposed by Spain on foreigners, many examples can be adduced. To avoid prolixity, I shall only notice a few, of different epochs.

On the 7th of February 1790, the American schooner *Peregrine*, captain Palmer, arrived at the western bay. The governor caused her to be taken to La Soledad; and the captain, on being reprimanded for touching there, replied that he had no other object than to procure an anchor. He was ordered to leave the islands, and immediately obeyed.

In two cruizes made by Don Ramon Clairac in 1787, he found in different parts of the islands, the ship *Hudibras*, the shallop *Audaz* and the brig *Malplaquet*, all English vessels. They made divers excuses for being there, and were all likewise ordered off.

On the 29th of July 1793 the governor Sangineto learned that, in the islands, and the neighborhood of them, were various foreign fishing vessels; he called a council of his officers, in which it was resolved that Lieut. Don Juan Latre, in the brig *Galvez*, should go in quest of these vessels, and expel them. The *Galvez* sailed on the 11th of December, and found in the *Isla Quemada* the American brig *Nancy*, Capt. Gardener, to whom he addressed the following note:—"In consequence of the recent treaties between the Spanish and British governments, and of the orders I have received from the commander and governor of these islands of Malvina, it is my duty to inform you that you have no right either to fish or to anchor in the neighborhood of Spanish settlements; as solely the English royalists are allowed to fish at a distance of ten leagues from the said establishments; nor are they permitted in this part of America to construct huts in any place not situated to the south of them; therefore, the Anglo-Americans not being comprehended in the privilege enjoyed by the royalists; and even were they, this privilege not allowing them to anchor in the ports of the said islands; you will set sail so soon as the weather shall permit, and go to some other part where it is allowed to do it. God preserve you, &c. &c." (Latre afterwards relates the destructive method resorted to by these vessels for taking seals; burning the rushes to force them out, and destroying them without distinction of age or sex.) A short time after receiving this intimation the American vessel set sail.

On the 17th, in the port of *Los Desvelos*, Latre found six American vessels, all from New York, and one French vessel; viz:—

ship Josefa, Capt. Hewitt ; and brigs Nancy, Capt. Green ; Marza, Capt. MacCall ; and Mercury, Capt. Bernard. These vessels were employed in fishing. Not only was the same intimation made to them, but their huts and gardens were destroyed ; the crews of the vessels assisting in the demolition. All of them successively obeyed the orders ; and on setting sail, duly saluted the Spanish flag, by lowering their own.

On the 31st of January 1802, the governor, Villegas, notified the arrival of the American ship Juno, Capt. Kendrick, for the sole purpose of taking in water, and stated that she was the bearer of a recommendation from the Spanish consul resident in the U. S., which had been given her in case of her being forced to touch at the Malvinas. The viceroy replied to him, under date of 4th May, that, notwithstanding such recommendation, he should fulfil the orders he had received with respect to any foreign vessel arriving there. I think I have now cited sufficient facts of this nature.

We have now arrived at the epoch of the great blow struck by America against the power and dominion of the kings of Spain.— Here let us pause a moment. The long series of accredited facts I have brought forward clearly proves that Spain possessed and exercised an exclusive sovereignty over all the archipelago of the Malvinas. Notwithstanding this, it may not be superfluous to note down here a few of the many observations which present themselves.

It can no longer be denied that, prior to any nation taking possession of the islands, Spain called them hers. This pretension may have been founded on a first discovery made by Americo Vesputio, by Magellan, or by others ; but no matter on what it be founded, or who may have really been the first discoverer ; the fact is, the claim existed and was acknowledged. This is proved by England having desisted from the plan of lord Anson. If England had possessed any right over the islands, the demand of the Spanish minister, relative to the object of the expedition, would have been ridiculous and insulting. Why question the owner of a thing, as to what he is about to do with that which belongs to him ? Above all, had such right been inherent in England, and not in Spain, England would not have desisted : therefore up to that time England possessed no right.

France was the first nation which, long after this, took possession of the Malvinas : Spain claimed them as adjacencies of the continent : her dominion over them was acknowledged, and they were given up to her.

More than twelve months subsequently to the French, England took possession and was dislodged ; and hardly had a restitution of her rights been made to her, when she ceded them to Spain by a treaty. Thus Spain, by these acts, reassumed all the rights

which may have appertained to France or England. From that time Spain continued in the full enjoyment of an acknowledged sovereignty; in the exercise of which she, in 1790, granted to the English permission to fish at a distance of ten leagues from the coast. Long posterior to that date, and since then, not content with written titles, she exercised a positive dominion over them; formed and supported permanent establishments, and her orders were obeyed by all the foreign vessels which touched at her possessions. Thus, then, if we make the application of the principles laid down, we shall find that the right of Spain was founded. 1st,—In the discovery: at least it cannot be proved that it was not due to her navigators. 2d,—In the first occupation: for the rights which France had acquired thereby, were transferred to Spain. 3d,—In the possession, not ideal and nominal, but a permanent, real, positive and expensive possession. 4th,—In the cession made by the only two nations, England and France, who could lay any claim to the islands; cessions which obviate any doubt or dispute which could be brought forward relative to the first discovery or the first occupation: of which cessions that of England is proved by the treaty of the year 1790; for if, as Mr. Parish maintains, England had not lost her rights by the abandonment of the islands, she would not, in 1790, have contented herself with the limited and trivial right of fishing at a distance of ten leagues from them. I mean therefore to say that the right of Spain is founded on the most respectable and universal principle acknowledged by the law of nations; and which has been before laid down.

In conformity with these same principles it is evident that Spain possessed the right to prohibit foreigners from the enjoyment of the advantages afforded by these islands, and of punishing discretionaly those who might infringe her regulations.

It is clear, then, that all these rights passed to the nation which had succeeded to Spain in the sovereignty over those regions.

It would be both useless and ridiculous to lose time in demonstrating that from the moment the Argentine Republic became an independent nation, it acquired and legally appropriated to itself all those rights formerly possessed and exercised over its territory by Spain. But there has not been wanting a foreign newspaper to advance the singular idea that, the former viceroyalty of Buenos Ayres having been subdivided into various sovereign States, it could not be known to which of them belonged the right which Spain had over the coasts up to Cape Horn, and the adjacent islands.

To which could it belong, if not to that to which they are indissolubly bound by nature? The territory which formerly composed the United Provinces of the River Plate having been subdivided into various States, each has remained mistress of the advantages which the locality of her territory presented. This is both

natural and just ; as it is conformable to the principle of the law of nations, and to the primordial objects of the institution of governments. Paraguay, the Oriental State, or Bolivia, governing our coasts and the islands adjacent to them ; and the Argentine Republic legislating, with similar right, in the ports of Assumption and Maldonado, or relative to the mines of Potosí ; would present an inextricable labyrinth, whose only outlet would be war, and the consequent misfortunes of the regions so governed. This consideration has uniformly operated in all the States raised on the ruins of the old Spanish dominion. There is not one of them, from Mexico to Buenos Ayres, but, on separating from Spain, adopted the principle, that to each State, whether large or small, belongs the whole extent of territory which appertained to the viceroyalty or captain generalship to which it has succeeded (except in cases of special agreement), as also the exclusive enjoyment of all the rights and advantages inherent to the said territory. It cannot therefore be denied that the Argentine nation succeeded to Spain in the dominion over the Malvina Islands, on separating herself from that country in 1810.

Let us now trace the last period of the history of the Malvinas, which commences in 1810.

From that year up to 1820, no establishment (at least, no permanent one), was formed by any nation, either in the Malvinas, or on the coasts of the continent ; and this notwithstanding that the Argentine Republic was not then in a situation to attend to the defence of them ; and notwithstanding that, in this interval, foreign nations continued to frequent those seas, either for the purposes of navigation or for the fisheries, and that therefore it was of importance to them to form permanent establishments there. This plainly proves that foreign nations continued to consider those regions as appertaining to a dominion which has since devolved on this Republic.

In 1820 the government of Buenos Ayres took formal and solemn possession of the Malvinas, in the person of the colonel of its navy Mr. Daniel Jewitt.

When Jewitt arrived at La Soledad he found disseminated in the islands more than fifty foreign vessels. I will name some of them :— ENGLISH,—Ship *Indian*, Capt. Spiller, from Liverpool ; brig *Jane*, Weddle, from Leith ; do. *Hette*, Bond, from London ; do. *George*, Richardson, from Liverpool ; cutter *Eliza*, Powell, from Liverpool ; do. *Sprightly*, Frazier, from London. AMERICAN,—Ships *General Knox*, *Eucane*, *Newhaven* and *Governor Hawkins* ; brigs *Fanning* and *Harmony* ; schooners *Wasp*, *Free Gift* and *Hero*,—from New York and Stonington.

All these vessels were engaged in the seal-fishery, and they even killed on the islands the cattle which had been carried there from Buenos-Ayres by the Spaniards. In the presence of these vessels

anchored in the port of La Soledad, Jewitt took possession, firing a salute of 21 guns with the artillery which he landed. He treated them all with urbanity, and notified to them in writing the fact of the Republic having taken possession, and the prohibition to fish on the islands or kill cattle thereon, under the penalty of detention, and the remission of the infringers to Buenos Ayres to be tried.

In 1823 the government appointed Don Pablo Areguati commandant of the Malvinas. In the same year Don Jorge Pacheco and myself, convinced of the right of this Republic, and seeing it recognized by the tacit and general consent of all nations during the three preceding years, solicited and obtained from the government the use of the fishery and of the cattle on the eastern Malvina island, and likewise tracts of lands thereon, in order to provide for the subsistence of the settlement we should establish there. An expedition was in effect fitted out, composed of the brigs *Fenwick* and *Antelope*, which carried out among other things a quantity of horses—and of the schooner *Rafaela*, (which was armed,) for the seal-fishery, all under the direction of Mr. Robert Schofield. The difficulties attendant on every new undertaking, were in this instance so great as to discourage the director, Schofield, who abandoned it the following year, losing more than thirty thousand dollars and ruining himself, so that, dying shortly afterwards in Buenos Ayres, he left his widow and small children in a state of indigence.

But I was not disheartened on this account. The year following, with the assistance of some of my friends, I prepared an expedition which sailed in January 1826, under my direction, in the brig *Alert*. After many sacrifices, I was enabled to surmount great obstacles; but still, that which we expected to effect in one year, was not realized before the expiration of five. My partners lost all hope, and sold me their shares. I bought successively three vessels, and lost them; I chartered five, one of which was lost. Each blow produced dismay in the colonists, who several times resolved to leave that ungrateful region, but were restrained by their affection for me, which I had known how to win, and by the example of constancy and patience which my family and myself held out to them.

Fully aware of the great advantages which the Republic would derive from establishments in the south; and some experiments which I had made in agriculture having been attended with success, I resolved to employ all my resources and avail myself of all my connections in order to undertake a formal colonization, which should secure those advantages and lay the foundation of a national fishery, which has been at all times, and in all countries, the origin and nursery of the navy and of the mercantile marine. But wishing, as was natural, not to hazard my own labor and money, as well as

that of the colonists and of those who had assisted me, I solicited from the government not only a grant of land, but also the exclusive right to the fishery, for the benefit of the colony. The government, convinced of this necessity,—of the utility which would accrue to the Republic from the enterprise, although it were nothing more than having a port to the southward for maritime operations, in case of a war like that which was then being carried on; and of the expenses which the undertaking required, issued a decree on the 5th January 1828, whereby, in conformity with the spirit of the law enacted by the Hon. House of Representatives on the 22d October 1821, it granted to me the right of property to the waste land on the island, (after deducting the tracts conceded in 1823 to Don Jorge Pacheco, and ten square leagues which the government reserved to itself in the bay of San Carlos,) and likewise to Staten Land. It also conceded to the colony exemption from taxation for 20 years, and for the same period the exclusive right to the fishery in all the Malvinas and on the coast of the continent to the southward of the Rio Negro; under the condition that within three years I should have established the colony.

In consequence of this, I put all my connections in requisition and exhausted all my resources to the degree that I was in want of the necessaries for the decent maintenance of my family, for several years. I made contracts in the U. S., and in various countries in Europe, for bringing out families and acquiring vessels, which would become the property of the colony, without any disbursement, by paying for them with the product of the fishery—so that, in a short time the Republic would possess a fishing marine. When the aggression of the Lexington happened, one of these vessels had sailed from the U. S.; others were about to depart but were stopped by the intelligence of that event. I have in my possession the letters in which this information is communicated to me.

In the mean time, prior and subsequently to the decree of January 5th, 1828, merchant vessels of all nations frequented the colony in their voyages to the Pacific, and on their return from thence. They there took in fresh provisions, refitted themselves and recruited their sick. So content were they with the treatment they received, that they viewed the establishment of the colony, as a great benefit to commerce in general, as it saved them from deviating from their route to call at Rio de Janeiro or St. Catherine's, as they used to do before. This is sufficiently proved by the great number of merchant vessels which repeatedly visited the colony. The fishing vessels, on the contrary, which trafficked among the islands, began to avoid coming in contact with it: they seldom called at the port, confining themselves to the bay of San Salvador, distant by water 14 leagues from the colony. Whenever they did visit it, they received the best treatment. I have not spoken with any of them,

that was not aware of the prior dominion of the Spaniards ; of the prohibition imposed by them to frequent those seas, and of the act of sovereignty exercised by this Republic in 1820. Warned not to continue fishing there, they all promised to obey, but none of them ever did so ; and the colony without any repressive force, beheld its prerogatives rendered sterile and contemned.

The damage which these depredations occasioned the colony was not trifling, since it was rapidly hurrying it to complete dissolution. It is evident that the seal fishery in those islands, is exhaustible,—for in time of the Spaniards it was so abundant, that only large vessels were engaged in it, and now only small vessels are employed. Foreigners who only seek present and immediate utility, without considering the future, effect the slaughter in a pernicious manner. They set fire to the fields and slaughter indiscriminately, and in all seasons, even in that of bringing forth young. In consequence of this, and of the constant and great concourse, has ensued the present diminution of seals, of which there are now scarcely the twentieth part of what there were in 1820. It is not impossible that this valuable species may return to its former abundance, by means of a well regulated slaughter, and some years of respite. But whilst foreigners continue to slaughter it is impossible, and the species will become extinct. If this take place, the colony is undone, for this slaughter is the great allurements which it presents. Who would go and remain in that cold and desolate region merely for agricultural pursuits, when the province of Buenos Ayres offers, with a temperate climate, so many means of following them with facility, and without the heavy expenses attendant on a residence in the Malvinas ? I perceived the danger to which this disorder exposed the colony ; and did not venture to bring out new settlers without having an effectual guarantee for their fully enjoying their privileges.

For this reason I requested the government to furnish me with a vessel of war, to enable me to cause the rights of the colony to be respected. The government was aware of the necessity of the measure ; but not being then able to place a vessel at my disposal, it resolved to invest me with a public and official character ; and for that purpose issued the two decrees of the 10th of June ; the one, re-establishing the governorship of the Malvinas and Tierra del Fuego ; and the other nominating me to fulfil that office.

In virtue of this nomination on the 30th of August, 1829, the governorship and commandancy of the island was formally reinstalled, under salutes of artillery. Without deviating in the least from the urbanity which had before characterized my proceedings, I wrote to the commanders of the fishing vessels, to inform them of the new character with which I was invested ; and acquainting them with the resolutions of the government of Buenos Ayres ; and of the

necessity there was for their desisting from fishing, under the penalty of being detained and sent to Buenos Ayres for trial. I made this notification to the American schooners *Superior* and *Harriet*, permitting them, nevertheless, to carry off the cargo they had collected on the islands; and I candidly declare that I fully believed in the sincerity of their promises.

By this time the colonists had become accustomed to the climate; they had commenced various labors, and counted on a certain and decent subsistence; they had become, particularly, very much attached to the colony; and they considered themselves happy, and I likewise considered them so.

I then no longer doubted of the fortunate result of my undertaking; and I felt convinced that it would, in a short time, begin to reimburse my immense outlay, and to recompense me for the incessant labor it had cost me.

But these schooners repeated the offence, and they were detained:—Your Excellency and the public know the rest: know that, for thus defending the rights of the colony, and causing the resolutions of my government to be respected, I brought upon myself the vengeance of a vessel of war belonging to a friendly nation, which, in violation of the most sacred principles, took pleasure in oppressing innocent people, and in destroying in one hour what had cost me an immense sum, and many years of industry, of labor, and of perseverance.

I have now arrived, Sir, at the point from which I set out in the commencement of this report; thus completing the sketch of the history of the Malvina Islands.

But this interesting subject appears to be inexhaustible; and I must not omit some remarks to which the latter period of the history gave rise.

The apparent indifference of the Republic with respect to the Malvina Islands, during the first ten years of its political existence, may perhaps be adduced as an argument against its right of sovereignty over them; but such objection would be entirely void of good faith, for according to the principles laid down, the abandonment of a territory does not annul the right to it, unless it be pontaneous, and without any intention of returning to it. Then only is there a real *abandonment*; in the opposite case there is only a *non use*, but the right still exists. This *non use* by the Republic during those ten years did not arise from a want of will to occupy, but from another most powerful and extraordinary motive, well known to all nations:—the necessity of securing its independence by supporting expensive wars. Not a single fact, not a single document can be cited to prove that during that interval the Republic had really abandoned the Malvinas, or that it had no intention to establish itself there. Thus, then, even adopting the opin-

ion of those writers on the laws of nations which are most contrary to the interests of the Republic, that is to say, that there exists prescription among nations; even then, this could not be brought against her, as all the requisites demanded by prescription have been absolutely wanting. The first and most urgent duty of the Republic was to secure its political existence, but no sooner had the war with Spain subsided, than her first care was to resume formal possession of the islands, which she did in 1820.

This act was public and solemn; it was effected in the presence of a number of vessels, which were besides informed of it in writing; and which carried and spread the intelligence among all maritime nations. Those nations were silent on the subject; and the Republic continued peacefully and publicly to exercise those acts of dominion which have been before stated; and during which, repeating the warning, she declared to the world her resolution and her rights.

The sovereignty of the Argentine Republic over the Malvinas is therefore unquestionable, if we consult the principles of the laws of nations, and the undoubted facts to which we have applied those principles.

According to these same principles she had a right to prohibit fishing within her jurisdiction, and to detain and bring to trial any vessel which might, by infringing the prohibition, voluntarily submit itself to the results. She could do it, because she is mistress of the isles—she ought to do it, because her interests required it—and as it was her interest to do it, she did it.

The seal-fishery will produce great profits to the State if it be properly organized; and it will, besides, produce them without any expense to the treasury. These revenues are more required by us than by the opulent nation of the United States. We should be fools indeed, if, in the infancy of our progress, we consented to allow foreigners to reap all the advantages which nature has bestowed on our isles and coasts; advantages which will in time draw to us foreign capital and foreign population. If the North Americans had shewn a ruinous indifference for lucrative undertakings, would they now see populous and flourishing cities where before were nothing but woods and deserts? The immense fisheries of Newfoundland, which produce yearly many millions of dollars, and contribute to supply excellent sailors for the three greatest maritime powers in the world, were raised from nothing by a private individual; and with the assiduous care and protection of enlightened governments, have arrived at an astonishing state of prosperity. Why should not the fisheries of the South become in the course of time proportionally as valuable to us as are those of the North to the English?

The celebrated Ulloa says very justly, speaking of the exclusive fishery of England in Newfoundland:—"It would be ridiculous for her to allow others to partake of what to her is of the greatest value, (the fishery,) as being the only advantage produced by that island; and which other nations have vied with each other to acquire, by asserting dominion over a country which yields no other riches to its possessor than its fishery, and to obtain which it is necessary to support the inconveniences of a climate, which, from its excessive rigor, is hardly inhabitable during the greater part of the year." It would seem that Ulloa was thinking of the Malvinas when he wrote this.

Not only is it right that nations should appropriate to themselves the exclusive enjoyment of these advantages, but it is what is always done. We have a striking example of this in Newfoundland. Why have other nations required express and especial concessions from England, ere they could undertake this fishery? Why have the banks of that island been the subject of so many treaties?—Why has England been able to allow, prohibit, or restrict fishing there, and to trace the limits in which it might be carried on? Because she is the owner, and because it suited her interests.

The Spaniards were the first who discovered and peopled that island. This is proved by the Spanish names given to its capital, Placentia, and to other places, such as Cabo de Buena Vista, Punta Rica, &c. Abandoned by them, it was afterwards taken possession of and abandoned by the Englishman Gerber; but in 1622 another Englishman, named George Calvert, succeeded in establishing himself there permanently, carrying with him every thing that was necessary. He then privately commenced the famous cod-fishery, which has since become of such immense importance as to excite the desires of all nations. Spain, (perhaps on the ground of the first discovery and occupation,) claimed a right to this fishery, as may be seen by the 15th article of the treaty of Utrecht, made in 1713; which claim she only recently gave up, in 1763, by the 18th article of the treaty of Paris, made in that year; notwithstanding that Spanish subjects, especially the Guipizconians, had been in the tranquil enjoyment of that right.

By the same treaty of Utrecht the French were prohibited from establishing themselves on the island, or even remaining on it a longer time than was necessary for taking and drying the fish; which they could only do between Cape Breton and Punta Rica; and the islands of the river and gulf of St. Lawrence were declared to belong to them. Perhaps this concession was made to them on account of the French being then masters of Placentia, which they ceded to the English, and of Canada, to which continent the river St. Lawrence belonged. Thus it was that they lost it by the 5th article of the treaty of 1763; by which they were only

permitted to fish in the gulf at the distance of three leagues from the English coasts, and without Cape Breton, at the distance of fifteen; all which was confirmed, with some variations, by the 4th, 5th and 6th articles of the treaty of Versailles in 1783.

In like manner, by the treaty concluded on the 20th of October 1818, between Great Britain and the United States, the latter were allowed to fish in Newfoundland, within certain limits which were minutely detailed, and at a distance of three maritime miles.

It will be seen from this, and many other acts, that England appropriated to itself the exclusive enjoyment of the cod-fisheries; interdicted other nations from the use of them, and pointed out the limits which they should respect. We likewise see here an instance of sovereignty acknowledged and exercised over an island whose coasts were either uninhabited, or peopled by Esquimaux Indians, who, as in Labrador and Hudson, do not acknowledge the British dominion, and live independent.

But in order to shew more fully the mode in which England exercised her right over the Bank of Newfoundland—of the precautions she has taken—of the penalties she has imposed, and the rigor she has displayed in this respect, we will here copy two acts of parliament relative to the fishery during the reigns of George III. and George IV.

1. "No alien or stranger whatsoever shall at any time hereafter take, bait, or use any sort of fishing whatsoever in Newfoundland, or the coasts, bays, or rivers thereof, or on the coast of Labrador, or in any of the islands or places within or dependent upon the government of the said colony, always excepting the rights and privileges granted by treaty to the subjects or citizens of any foreign State or power in amity with his Majesty."

2. "It shall be lawful for every officer, commanding any of his Majesty's ships at Newfoundland, to stop and detain all and every ship, vessel, or boat, of what nature or description soever, coming to, or going from the said island, and belonging to, or in the service and occupation of any of his Majesty's subjects residing in, trafficking with, or carrying on fishery in, the island of Newfoundland, parts adjacent, or on the banks, in any place within the limits of his station, and to detain, search, and examine such ship, &c., and if, upon search or examination, it shall appear that there is reasonable ground to believe that such ship, &c., or any tackle, apparel, or furniture, used, or which may be used, by any ship, &c., or any implements or utensils, used, or which may be used, in the catching or curing of fish, or any fish, oil, blubber, seal-skins, fuel, wood, or timber, then on board of such ship, &c., were intended to be sold, bartered for, or exchanged, to the subjects of any foreign state, or shall be discovered to have been sold, bartered for, or exchanged; or if any goods shall be found on board

such ship, &c., or shall be discovered to have been on board, having been purchased, or taken in barter or exchange, from the subjects of any foreign state; in every such case, he shall seize and send back such ship, vessel, or boat, to Newfoundland; and such ship, &c., shall, upon due condemnation, be forfeited and lost; and may be prosecuted, for that purpose, by the officer so seizing the same, in the vice-admiralty court of Newfoundland; one moiety of which forfeiture to be given to the said officer, and the other moiety to the governor of Newfoundland, to be applied in defraying the passages home of such persons as are directed to be sent back to the country to which they belong."

In view of these strong regulations, by which the fact of finding in a vessel, a few fish, a little wood, &c., is sufficient to detain, search, bring to trial and confiscate her, can it rationally be a matter of complaint and surprise that this Republic, by prohibiting the fishery within its jurisdiction and punishing the infringers, should exercise the same rights, although not in a manner so inquisitorial, vexatious and rigorous? The impartial of all nations will decide.

But as often as I have hitherto employed the word *fishery*, I have done so to accommodate myself to common usage. I think that this word is not the most proper to express the act which is meant to be designated by it. What foreigners do in the Malvinas is not *fish*, but *slaughter*, which is performed by ball, clubs, &c., and always on the shore. The real fishery is only in the high seas.—The use of this word, when treating only of slaughter, has given rise abroad to mistaken ideas with respect to the pretensions of this Republic; it being probably believed that she prohibits fishing in the seas. The first intelligence which reached the U. States of the detention of the schooners, was given by the mate of the Breakwater, and he represented it with that character. The *U. S. Gazette* announced it in this distorted manner:

"Arrived at Stonington on Monday, Schr. Breakwater, from the Falkland Islands, whither she went on a sealing voyage. The Breakwater put in at Port Louis, where she was forcibly taken possession of by Vernet the Governor, acting as he said under the decree of the Buenos Ayrean government, *forbidding all fishing in those seas*.....Schooner Harriet has also been seized *under similar circumstances*."

On this account it was, Excellent Sir, that a friend of mine, a native of the U. S., having written to the Secretary of State upon this affair, received for answer that "measures were taken to *ascertain* (and this is another proof that such is the object of Mr. Baylies' mission,) on what foundation the claim of jurisdiction over the islands rested, but the sickness and death of Mr. Forbes had for the time interrupted the investigation; our right of fishery,

however, *in those seas*, is one that the government considers indisputable, and it will be given in charge to the minister about to be sent there to make representations against, and demand satisfaction for all interruptions of the exercise of that right," (the fishery in the seas.) It is also on this account that the President only speaks in his message of *those seas*. The owners and parties interested in the captured vessels endeavored in this manner to deceive, in order that, the capture being then declared illegal, they might claim their insurance from the underwriters; and the government and the nation candidly believed that the question was relative to a fishery, not on the shores of a foreign jurisdiction, but on the high seas, such as the whale fishery. The consul Slacum quoted in one of his notes a *part* of the instructions given to Mr. Forbes, to protest against any restriction of the right of the U. S., but if he had quoted the *whole* of them, perhaps we should see that the *right in question* (as Mr. Slacum expresses himself,) related to the fishery *in the seas*; and that Mr. Forbes, seeing that this Republic set up no pretensions in this respect, deemed it unnecessary to make any remonstrance.

I have already said that this Republic, in order to establish the prohibition against fishing on the coasts belonging to it, within the distance it might think necessary for the purpose of securing that enjoyment, was not under the obligation of giving previous notice to any nation; I now add that it was unnecessary. With what justice can it be said that the want of official notice respecting this prohibition injured any nation? How—in what manner? If any one considered it had reason to complain of this appropriation, why wait to do so till it should receive official information? But it is useless to expatiate on this. No nation can say that it was not aware of the exclusive right of Spain, and that this right had devolved on the Argentine State; which, strictly speaking, did not establish any new prohibition, but continued that which Spain had imposed, though not to the same extent or with the same rigor.—On the other hand, the taking possession of the islands in 1820 was quite public: the subsequent acts of the government were so likewise, and the decree of June 10th, 1829, and my circular, had been printed. How is it that the English government did not wait for official intimation to make, through Mr. Parish, the protest which it conceived itself entitled to make? Besides, in 1829, my appointment as governor of the Malvinas and of Tierra del Fuego as far as the Cape, was published in the U. S.; and the year following, several journals inserted various notices, among others, one in which settlers were invited, and to entice them, it was expressly stated that the colony enjoyed the exclusive right to the fishery. But, above all, did not Mr. Slacum say that Mr. Forbes had received orders to remonstrate against that decree? Therefore the

government of the U. S. did not await, nor did it require, official notice to take the steps it considered it its duty to adopt.

Although there had been (which there was not,) any obligation incumbent on this government to acquaint another with its resolutions, an omission of this kind does not give room for complaint or remonstrance, nor can any right be founded on it, except when it entails injury on another nation. The injury which may ensue to a nation in such cases, can only arise from a want of knowledge of the measures adopted by another, and from being thereby precluded from taking steps on its part, or from sustaining its rights.— But, in the present case, there was no want of knowledge in other nations, nor have they consequently failed to act as they have deemed proper.

Thus far I have confined myself, Excellent Sir, to justifying the right of this Republic to the Islands, and the resolutions of the government with respect to nations in general. I now wish to limit myself specially to the U. S. of America, whose government is, of all others, that which most distinguishes itself in the untenable pretension of questioning or denying that right; but, of all others, it is certainly that which can do so with the least justice.

That England or France should do so, although without grounds, would not be surprising. But it is really so that the U. S. should attempt it; and if it be true that Mr. Baylies' mission is to *deny*, and not to *ascertain* the right, it may be said to them: "He who denies the right of another should produce his own titles." And what can the U. S. shew? Absolutely none: at least, as yet I have never heard of any.

But not to leave any thing unanswered, I will call to recollection that some journals of the U. S. have affirmed that that supposed right was inherited. No such inheritance, however, does exist or has existed; 1st, because England, from which alone they could have derived it, is destitute of it, as has been shewn; 2d, because when Spain conceded to England the fishery at the distance of ten leagues, she did not concede it to the U. S., which already formed another nation; 3d, because even did the Malvinas belong to H. B. M., the U. S. by the treaty of October 20th 1818, engaged not to fish within three miles of the coasts, ports, &c., of H. B. M. in *America*; 4th, because although there had been nothing of this, it is inconceivable how this right should descend to the U. S. and remain at the same time with England, who claims it, according to Mr. Parish's protest; 5th, because it is a political absurdity to pretend that a colony which emancipates itself, inherits the other territories which the metropolis may possess. We inherited the Malvinas because they formed a part of the Spanish government of Buenos Ayres at the time of the revolution. If that singular doctrine were to be found in the code of nations, the Low Countries,

for example, on their independence being acknowledged in 1648, would have succeeded to Spain in her rights to America, and in the same manner the U. S. would have appropriated to themselves the British possessions in the East Indies. Inheritance, indeed! The U. S. did not inherit the rights of England in Newfoundland, notwithstanding its contiguity, and are they to inherit those which she may have to the Malvinas, at the southern extremity of the continent, and in the opposite hemisphere?

But let us pass on to another argument of a more elevated origin, and the only one of any weight. "One of our vessels engaged in a traffic which we have always enjoyed, without molestation, has been captured," says the President of the U. S. in his message.—Behold here, Excellent Sir, the whole title which they allege—"we have fished freely, therefore we have a right to continue doing so."

The fact is not correct, nor if it were, would the inference be so. In the time of the Spaniards, as we have seen, not even the navigation of those seas was allowed, much less the fishery at the Malvinas. In 1820 and in the subsequent years, the Republic again enjoined, through Jewitt and me, the prohibition as far as regarded the fishery. Your Excellency will have remarked in the historical sketch of the Malvinas, that, with very few exceptions, the fishing vessels there and on the coast of the continent have been English and American, and the greater number of the latter nation.—How then can it be sustained that the U. S. have *always* enjoyed the right of fishery, and that too *without molestation*? The only time they may have freely enjoyed the fishery, is the period elapsed between 1810 and 1820. But this enjoyment does not authorize that inference. It was temporary, and owing to the serious attentions of the Republic; and according to the principles laid down, the non-use of a right, produced by an extraordinary circumstance or event, does not entail a forfeiture thereof, in like manner as the tacit toleration of the enjoyment of it by another country does not occasion it; for, when there is no express cession or abandonment proved by facts, the presumption is that the enjoyment tolerated to the other nation, is without prejudice to the owner's right. The U. S. cannot, therefore, found any right on the fact of having fished freely during those ten years; for, to do so it would be necessary that that of the Republic had become extinct. Therefore the U. S. have absolutely no right to carry on the fishery in defiance of this Republic, either in the Malvinas or on the coasts of the continent. There are besides special circumstances, which, render it imperative that the U. S. should be the last nation in the universe to deny the sovereignty of this Republic in those regions, if, as I firmly believe, they intend to adhere to good faith, and to the principles which the civilized world respects.

In 1816, the representatives of the nation declared the independence of the United Provinces of the Rio de la Plata, comprised within the limits of the ancient vice-royalty of this name. The commissioner of their government resident in the U. S., Don Manuel H. Aguirre, was directed to solicit the acknowledgment of that declaration. He commenced his negociations with the Secretary of State, Mr. John Quincy Adams, immediate predecessor of Gen. Jackson in the Presidency. The minister asked Mr. Aguirre, in a note dated August 27th, 1817, whether the provinces occupied by the Spaniards, Montevideo in possession of the Portuguese and the Banda Oriental governed by Artigas, and at war with the National government, were comprised in the territory of the Republic. Mr. Aguirre answered in the affirmative; and without further doubts respecting the territory of the Republic, the U. S. government, under date of March 25th, 1818, transmitted a message to congress on this subject, stating among other things the following: "The commissioner has manifested that the government, the acknowledgment of whose independence he solicits, is that of the territory, which, prior to the revolution, formed the vice-royalty of La Plata. He being then asked whether it (the territory) comprised that occupied by the Portuguese, (it being besides known that the Banda Oriental was under the rule of Gen. Artigas, and several provinces in quiet possession of Spain) he replied in the affirmative. He observed that Artigas, although in hostility with the government of Buënos Ayres, sustained nevertheless the cause of the independence of these provinces."

Hence it is evident, 1st—that the U. S. *knew* that the territory of the Republic was that of the vice-royalty; 2d—that their doubts respecting the territory were limited to the provinces occupied by Spain, Portugal and Artigas; but that they harbored none relative to the other possessions which were formerly comprised in the vice-royalty; and they cannot now say that they did not know that the Malvinas and the coasts of the continent entered into the number of those possessions.

But it was not solely through the envoy of this government that they knew it; they were likewise informed of it through their own.

In 1818, the government of the U. S. sent commissioners to this capital, for the express purpose of obtaining the information which it deemed expedient. Mr. Rodney, who, some years after, died here whilst exercising the functions of Minister Plenipotentiary, and who was one of the commissioners, stated, among other things, in the report which, in fulfilment of his mission, he addressed to Mr. Adams, the following: "In 1778, a new vice-royalty was established at Buenos Ayres, comprehending all the Spanish possessions to the east of the western cordilleras, and to the south of the river *Marañon*" * * * * * "extending in a direct line,

from its north to its south boundary, a distance of *more than two thousand miles*; and from its eastern to its western not less than eleven hundred." * * * * * The report of Mr. Graham, also one of the commissioners, contains the same: these are his words:—"The country formerly known as the vice-royalty of Buenos Ayres, extending from the north-western sources of the river La Plata to the southern cape of America, and from the confines of Brasil and the ocean to the ridge of the Andes, may be considered that which is called '*the United Provinces of South America.*'" * * * * * Therefore the territory of the Republic is that of the vice-royalty, (in which were included the Malvinas) extending to the most southern cape of this part of America, which is Cape Horn.

To these reports of the commissioners the greatest publicity was given. The president submitted them to congress—the congress ordered them to be printed, and they were even republished in London a short time afterwards.

Being thus fully informed—being in possession of all these antecedents—knowing that the territory of this Republic was that of the vice-royalty, which comprised the Malvinas—knowing that it extended itself towards the pole as far as the most southern cape of South America—without the slightest doubt, objection or difficulty having occurred thereon, as had occurred with respect to the dissident provinces, or those occupied by foreign powers, the congress of the U. S. of North America, adopting the proposal made by the president in March 1822, and in contempt of the remonstrances of the Spanish resident Minister, in 1823 proclaimed in the face of the universe that it acknowledged the Argentine Republic as a sovereign and independent nation. Can it be possible that that same government, as well as the English, which, with equal information on the subject, imitated it three years afterwards, now, better informed, deny to the Republic the essential right of legislating over its own territory, and exercising a sovereignty which they spontaneously acknowledged? No; it is impossible! Such a phenomenon would convert the gentle feelings of gratitude into the most rancorous animosity.

It is therefore indisputable, that, besides the decisive facts which justify the right of the Republic with respect to nations in general, there are other special and powerful motives which oblige the U. States in particular not to disavow it.

Yet, solely for having supported this right, I am now grossly reviled. Justice demands the reparation of these outrages. I again say, Sir, that if my conduct has been criminal, if I am a pirate, a thief and an oppressor, the duty and the honor of Your Excellency require that I be punished; but if my conduct has been just—if I have been no more than a public servant, fulfilling

the instructions of my government, and if, for so doing, I find my fortune destroyed, and my name dishonored—if I have been no more than a good citizen, who, with my labor and my capital, endeavored to gain an honorable subsistence, rendering at the same time a great service to the state, the duty and the honor of Your Excellency require that the reparation and the satisfaction shall immediately succeed the injury and the insult.

In like manner, if we consider the positive proofs on which the right of the Republic to the Malvinas are decidedly founded, and the facts which most especially bind the North Americans to the acknowledgment of this right, how dark must appear the picture presented to the world by the action of Capt. Duncan in the Malvinas! If the Chargé d'Affaires can only see in it pleasing traits of patriotism, enlightened people will discover in it nothing but the fierce characteristics of oppressive power—a power which Duncan would have been very careful not to exercise towards England, France, or any other maritime nation. I think, Sir, that the criminal humiliation of the flag of the Republic, and the great insult then offered to the reputation and rights of this nation, loudly call for the most solemn satisfaction and atonement prior to entering into any negotiation. Even admitting that my conduct had been that of a noted pirate, in the country existed the government on which I depended, and before which I ought to have been accused. This ought to have been done, since Duncan uncourteously refused the offer I made, of calling on him personally and giving him any explanation he might require. Granting even that the Malvinas do not belong to the Republic; yet the United States cannot deny that the Republic was in actual possession of them. Therefore, the insulting, inhuman, violent and unnecessary spoliation she suffered ought, before all, to be repaired and atoned for. There is nothing uncommon in a nation arrogating to itself rights which do not belong to it, or giving, in her actions, plausible motives of complaint. Let us suppose for an instant that this is the case with the Republic. But what will become of the dignity of nations, the order of society, and the peace of the universe, if a single individual, who, whether justly or not, may consider his country offended, shall *take on himself the responsibility* of vandalically avenging her. For Duncan to be in this port; myself in this city; this affair under discussion, and for him to absent himself under a feigned pretext; and when he was only empowered to afford *legal protection*, to rush unnecessarily, without formality, treacherously, and in time of profound peace, to a formidable act of war; destroying an establishment, usurping its property, and keeping innocent and defenceless men during three months in chains, is an atrocious and barbarous action—a horrible crime,

the cruelty of which the government of the U. S. cannot deny without forever tarnishing the spotless glory of its name.

But I must here close this long report. I do so, Sir, with the regret produced by the consciousness of one's own incapacity, when interests of the first importance are under discussion. If I have not been so fortunate as to bring conviction to the mind in the part which relates to me personally, I shall feel it the less if these lines serve at least to assist in restoring to their immunity the incontrovertible and trampled rights of the soil which has adopted me.

LEWIS VERNET.

Buenos-Ayres, August 10, 1832.



[No. XXVIII.]

(COPY.)

LEGATION OF THE UNITED STATES OF AMERICA, }
 Buenos-Ayres, August 18th, 1832. }

The undersigned has the honor to acknowledge the receipt of the note of His Excellency the Provisional Minister of Foreign Affairs, dated the 14th inst.

A communication addressed to His Excellency which accompanied the note, appearing to be a memorial of Lewis Vernet, is returned.

Having no authority to stipulate that reparation shall be made to Lewis Vernet or to the Argentine Republic, for the acts of the commander of the Lexington at the Falkland Islands; and being expressly directed by his own government to justify those acts,—the undersigned must yield to that alternative which His Excellency has made imperative; and, as his continuance here would be useless to his country, he asks passports for himself and his family.

He relies on His Excellency for the necessary and usual facilities for embarking his personal effects and the library and archives of the Legation.

In closing his correspondence, the undersigned tenders to His Excellency the assurance of his respect and consideration.

FRANCIS BAYLIES.

To His Excellency

Señor Dr. D. MANUEL VICENTE DE MAZA,

Minister of Grace and Justice,

Charged provisionally with the

Department of Foreign Affairs.

[No. XXIX.]

(TRANSLATION.)

PROTOCOL OF THE CONFERENCE

OF THE 27TH. AUGUST.

The conference was opened in the government house by the Minister charged with the Foreign Relations stating to the Chargé d'Affaires of North America that the government had been much surprised by the return of the copy of the Report which accompanied its note of the 14th August, and by His Honor stating that he was not authorised for what was therein asked, and therefore demanding his passport: That the government, considering this act as the result of some misunderstanding, had desired its Minister of Foreign Relations to invite His Honor to this conference for the purpose of obtaining the necessary explanations relative to the return of the said report, to which the government could not agree.

The Chargé d'Affaires replied that he should have much pleasure in corresponding, in his diplomatic character, with H. E. the Minister of Foreign Relations, but that he could receive no communication from Mr. Lewis Vernet.

The Minister then explained to the Chargé d'Affaires of the Republic of the United States, that Mr. Lewis Vernet had not sent any communication to His Honor,—that the copy which had been joined to the note was a document in answer to the series of charges which formed nearly the whole subject of the first note with which the Chargé d'Affaires opened the negotiation—that, as such, it was a component part of the correspondence—that the having transmitted the answers to the charges, as they were given by Mr. Lewis Vernet, did not import the remission to His Honor, in his official character, of any other notes than those of the Minister of Foreign Relations.

The Chargé d'Affaires was not satisfied with this convincing answer, and replied that as Chargé d'Affaires of his government, he had not come here to act as a party in a litigated affair, or as accuser of Mr. Lewis Vernet before the government of Buenos Ayres.

To which was answered: that the having remitted a copy of the report of Vernet, neither was, nor could be considered as done with a view to give to the Chargé d'Affaires the character of an accuser, or of a party in a suit; that on the contrary, inasmuch as the government of Buenos Ayres did not consider the Chargé d'Affaires as being a special advocate of the citizens of North Ame-

rica, merely because he had presented a remonstrance in support of the rights of those citizens; so neither could it be imputed to this government that it had made a private individual a party in the negociation, merely because it had adopted the contents of the returned copy as an answer to the charges preferred; that Vernet was a public officer of the government, which had confided to his charge the civil and military command of the Malvinas; that, criminated as he was in the communication of the 20th of June, the government could not but hear him in reply to the charges brought against him, as was officially stated to the Chargé d'Affaires of N. America, Vernet having cleared himself from these charges, and it being necessary to reply to the Chargé d'Affaires on this head, a copy of the report itself appeared the most proper, as it sufficiently illustrated the matter; the report becoming from that moment a part of the note of the 14th of August in answer to the part relating to the charges.

His Honor the Chargé d'Affaires still insisted on his former declaration, adding that as the government of the Argentine Republic, by means of the said official note of the 14th August, asked for indemnification for the losses sustained in the destruction of the establishment at the Malvinas, by the commander of the U. S. ship of war Lexington, and reparation for the insult thereby offered to the Argentine Republic, without which it would not enter into the discussion of the other points; and as he had not received any instructions on this head, he considered his continuance near this government as unnecessary, and was therefore under the necessity of asking for his passport.

The Minister then observed to the Chargé d'Affaires that he had stated himself to be fully authorised; and that therefore the government never anticipated the breaking off of the negociation for want of authority or instruction; but at the same time that it could see no reason that could justify the return of the explanations given by the civil and military commander of the Malvinas, so neither did there exist any reason for the Chargé d'Affaires asking his passport, even though His Honor should not consider himself sufficiently authorised, on account of his having been sent expressly to justify the acts of Duncan; 1st, because, if the line of conduct adopted by the latter had not been marked out for him, it is inconceivable how it can be approved and justified by the government of the U. S. 2d, Because it is no less difficult to comprehend that that government should propose that the negociation for which Mr. Baylies was sent here, should be solely for what might interest itself, without any reference to what might be required from it; and 3d, because with respect to the extreme measure adopted by the Chargé d'Affaires of asking his passport, the Minister took the liberty to consider it inopportune; as it was not

uncommon in this kind of negotiation, especially between two Republics of congenial principles, in order to avoid the appearance of a want of good understanding, to ask for fresh instructions; that the government could not so far lose sight of an event which compromised the honor and the dearest interests of a sovereign and independent state, as not to give it exclusively the first place in the negotiation; and that if unfortunately, when the *Chargé d'Affaires* should have received the instructions of his government, the affair could not be concluded here, then the two governments would treat by means of a minister from this Republic being sent to the U. S.; and should they not be able to conclude the business there, then a neutral power should intervene.

The *Chargé d'Affaires* immediately asked, what were the questions which should be submitted to a neutral power, and who that neutral power should be.

He was answered that the Minister had ventured to throw out that indication with a sincere desire to prove to His Honor the *Chargé d'Affaires* that his not being provided with sufficient instructions did not render it necessary for him to ask for his passport; and not that he considered it an affair of the moment, but one for the discussion of which time would present the proper opportunity: That the principal questions were two; one of fact, the other of right: That the first comprised the conduct of Capt. Duncan in the island of La Soledad, and the Minister repeated that until satisfaction was given for the insult, and reparation and indemnification were made, he could not pass to the discussion of any other point: That he likewise repeated that it was an offence against the Argentine Government to announce the justification of the conduct of an officer of the U. S. Navy when that officer had had no farther powers for acting than the general instructions given to the commanders of its naval force relative to the protection of the commerce and citizens of the U. S.

In this state the conference was ended; the *Chargé d'Affaires* stating that he still adhered to the request he had made for his passport, and recommending the government to decide promptly.

The Minister stated to him that it was necessary to commit the conference to writing, and to insert it in the book or protocol of conferences.

His Honor would not agree to this: the difference of language on the one part, and it not being customary to do so in the U. S., prevented him from acceding to the wish of the Minister, notwithstanding all that he could urge in support of it.

MANUEL VICENTE DE MAZA.



[No. XXX.]

(TRANSLATION.)

TO THE CHARGÉ D'AFFAIRES OF THE UNITED STATES OF AMERICA.

DEPARTMENT OF FOREIGN RELATIONS, }
Buenos-Ayres, September 3, 1832. }

THE Government, surprised not less by His Honor the Chargé d'Affaires having on the 18th ult. returned the copy of the report of Don Lewis Vernet, than by the statement that he has been sent here to justify the acts of Capt. Silas Duncan at the Malvinas, and that not having therefore any authority to stipulate reparation for them, his continuance here would be useless to his country, directed the undersigned, previously to answering His Honor's communication, to invite him to a conference, as the most easy and expeditious means to clear up any misunderstanding that might have occasioned the aforesaid return, and perhaps influenced the Chargé d'Affaires's resolution to ask his passport. That conference having taken place on the 27th inst., and His Honor having objected to the proposal of the undersigned to resume it next day, and likewise to the recording of minutes of what had occurred therein, the undersigned informed his government thereof, and has received orders to state to the Chargé d'Affaires, that, it being impossible under such circumstances to proceed in a secure manner towards the happy termination of this affair, H. E. the Governor conceives it expedient to suspend all further negociation; and, in consequence, the undersigned herewith remits the passport which the Chargé d'Affaires has asked, regretting not having been able to gratify such a distinguished guest of a sister Republic, but cherishing the sanguine hope that the government of Washington, convinced of the insult and outrage committed on the dignity and honor of an independent and friendly nation, will feel the duty imposed upon it by justice and its own dignity of speedily granting redress and indemnification for the grievances and injuries occasioned by one of its naval officers.

On making this communication, the undersigned has the honor to inform the Chargé d'Affaires that the directions which he requests for embarking his personal effects, have been issued, and takes the opportunity of tendering to His Honor the sentiments of his highest consideration and esteem.

MANUEL VICENTE DE MAZA.



[No. XXXI.]

(COPY.)

LEGATION OF THE UNITED STATES OF AMERICA, }
 Buenos-Ayres, September 6th, 1832. }

THE undersigned, Chargé d'Affaires from the United States of America, near this government, has the honor to inform His Excellency the Minister of Grace and Justice charged provisionally with the Department of Foreign Affairs, that he has appointed and commissioned George Washington Slacum, Esqr., private secretary to the American mission, and that he is a member of his diplomatic family.

The undersigned tenders to His Excellency the assurance of his high respect and consideration.

FRANCIS BAYLIES.

His Excellency

DR. DON MANUEL VICENTE DE MAZA,
 Minister of Grace and Justice,
 Charged provisionally with the
 Department of Foreign Affairs.



[No. XXXII.]

(TRANSLATION.)

TO THE CHARGÉ D'AFFAIRES OF THE UNITED STATES OF AMERICA.

DEPARTMENT OF FOREIGN RELATIONS, }
Buenos Ayres, September 7th, 1832. }

THE undersigned, Minister of Grace and Justice, charged provisionally with the Department of Foreign Relations of the Argentine Republic, has had the honor of laying before his government the note under date of yesterday, addressed to him by the Honorable Francis Baylies, Chargé d'Affaires of the U. S. of America, informing him that he has appointed and commissioned Mr. George W. Slacum private secretary to the American Legation, and that he is a member of his diplomatic family; and although His Excellency does not see in this nomination one of those official appointments which should be announced to him, yet he has not been able to dissemble the astonishment which such an election has produced in him.

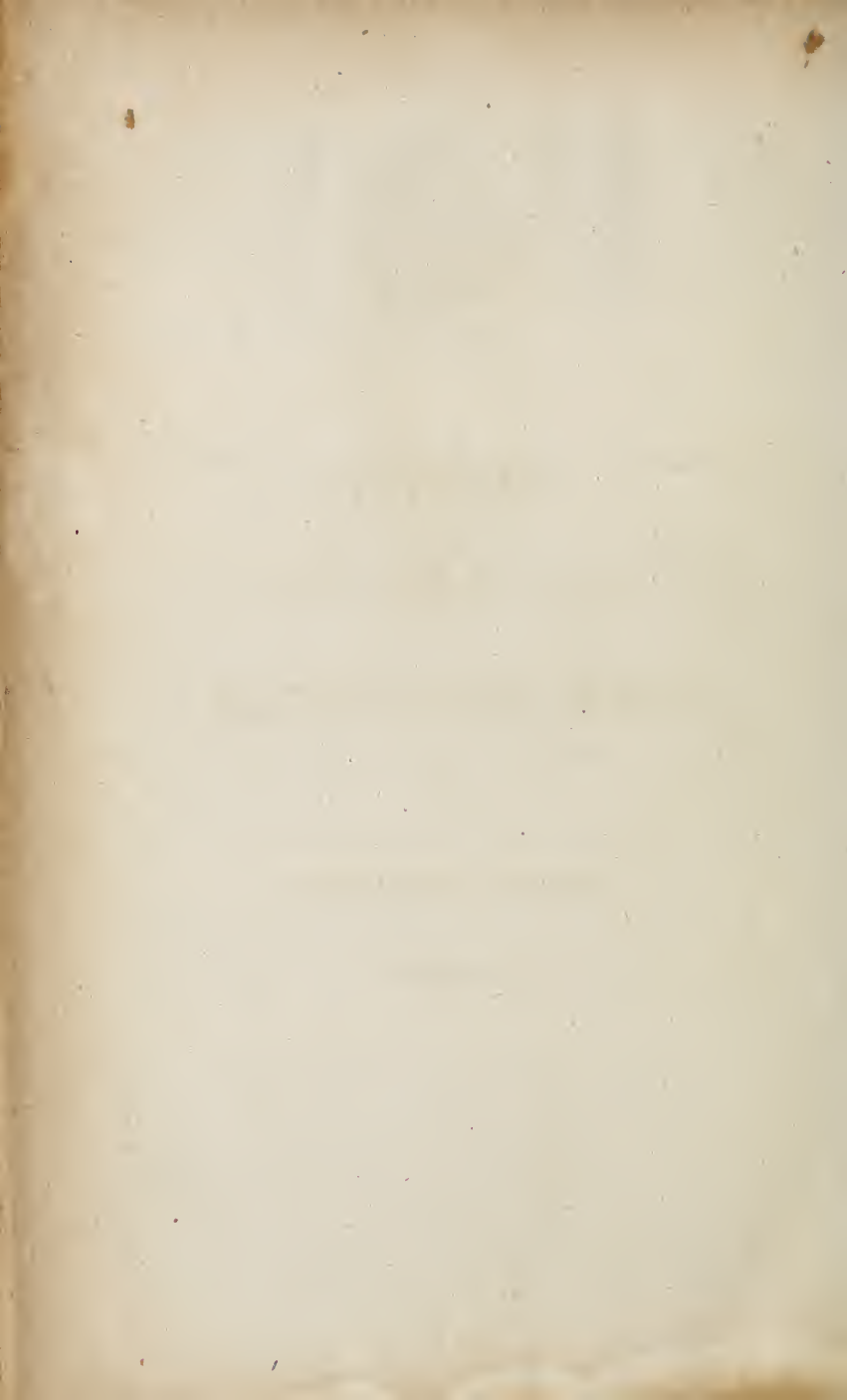
The Chargé d'Affaires cannot but be aware that Mr. Slacum, prosecuted by the magistrates of the country for a crime which the laws of the Republic punish even with the last penalty, succeeded in eluding the search of the Police, by seeking asylum in His Honor's house, where he has remained accessible to his connections.

After this event, the government of Buenos Ayres, who was not ignorant of the extent of its authority in the case of Mr. Slacum, nor of the immunity of the residence of a foreign public minister, flattered itself that it should merit from the Chargé d'Affaires of the U. S. the respect which its excessively liberal conduct was calculated to inspire, and that he would have comprehended, that notwithstanding the serious nature of the complaints against Mr. Slacum, the government was uniformly actuated by principles of moderation and circumspection. But if the Chargé d'Affaires be not sensible of the circumstances which yet unfortunately surround

Mr. Slacum, the undersigned is directed by his government to declare to His Honor, that its own dignity forbids it at present to consider that gentleman in any other light than that of a violator of the laws of the Republic, who has taken refuge in the house of the public minister of a friendly nation.

The undersigned has the honor to salute the Chargé d'Affaires of the U. S. with his most distinguished attention.

MANUEL VICENTE DE MAZA.



PAPERS

RELATIVE TO THE OCCUPATION OF

THE MALVINAS

BY

GREAT BRITAIN,

IN 1833.





(TRANSLATION.)

TO THE HONORABLE HOUSE OF REPRESENTATIVES.

BUENOS-AYRES, January 24th, 1833,—24th year of the }
 liberty, and 18th of the independence of the Republic. }

IF great has been the pain which the government has felt on receiving the news of the violent abuse of power exercised in the Malvinas by a vessel of war belonging to H. B. M., in dishonor of the Argentine flag, in violation of the integrity of the territory of the Republic, of its rights, of justice, and of the faith due to the relations of friendship and good understanding, cultivated without interruption with the court of St. James; it feels no less in acquainting the honorable representatives with that new and scandalous aggression, committed in the Malvinas by an officer of the English navy; an aggression rendered more remarkable by the reciprocal relations and treaties of friendship and commerce existing between the two countries, than that which was last year committed by the officer of another friendly nation—the U. S. of North America.

The schooner-of-war Sarandí anchored in the outer roads on the 15th instant, on her return from Port Luis de la Soledad, in the Malvina Islands. Her commander, Don J. M. Pinedo, reports that he has returned from thence, prior to receiving orders for so doing, on account of H. B. M. vessel of war Clio, having, on the 2d of this month, arrived in the island of Soledad, at a time when, owing to the insubordination of a few of the soldiers of the garrison, the chief of the establishment had been killed, and good order disturbed (in the restoration of which the naval commander was occupied when the Clio arrived); that having sent two of his officers on board the Clio, to make the corresponding offers of attention and friendship, they returned and informed him that Mr. Onslow, the commander of H. B. M's sloop, intended to go on board the Sarandí; which he did, on the same day, about three in the afternoon, accompanied by two of his officers; and entering into conversation with the commander of the Sarandí, he informed him that he came to take possession of the Malvinas, as belonging to H. B. M.; and that he had positive orders to hoist the British flag thereon within twenty-four hours; as he had already done in oth-

er ports of the said islands; and to give passage in a vessel to the officer and troops stationed there, and to the other inhabitants; and to cause every thing belonging to Buenos Ayres to be embarked and sent off; in consequence whereof, he requested that the Argentine flag, which was then flying on the shore, might be struck the following day, as he was bound to fulfil the orders he had received.

The surprise of Commandant Pinedo, under such circumstances, was as natural as was unexpected the aggression and violent spoliation which caused it, considering that this gross outrage was committed by a friendly and powerful nation which has always boasted of its fidelity and moderation, and which has lost no opportunity of manifesting the cordiality of its kind feelings towards the Argentine Republic. Notwithstanding, after having made to Captain Onslow the corresponding protests, and remarking to him that if the two governments were in peace and friendship this proceeding was unaccountably strange, he told him that his duty would not allow him to consent to this unjust pretension without receiving express orders from his government. Mr. Onslow then took his leave, telling Commandant Pinedo that he would reply to him in writing.

In effect, about 4 o'clock in the afternoon of the same day (the 2d), the said commandant received the note, of which the subjoined No. 1 is a copy; and on view of the intimation therein contained, he wished to resist at all hazards, when he met with difficulties which he considered insurmountable: nevertheless he resolved to send a deputation which, in the name of the government, should repeat to Mr. Onslow the former protests, and inform him that if he contemplated executing his project by force, he should consider himself bound to resist it, and that he therefore hoped Capt. Onslow would prefer waiting until the government should have marked out to him (Pinedo) the line of conduct he ought to pursue.

It was more than ten o'clock at night when the deputation returned on board the Sarandí without having been able to obtain an interview with Captain Onslow.

In this state of affairs, after having endeavored to surmount the difficulties which, in his opinion, would render the most desperate resistance unavailing, he became thoroughly convinced of it; and at six o'clock on the morning of the 3d, he went personally on board the sloop Clio and, for the last time, protested to her commander against the violation he was about to commit. Captain Onslow replied to him in the sense of the latter part of the subjoined note, assuring him that he could not defer the execution of the orders he had received for taking possession of the Malvinas; that he could see what force he had, and that he was in momentary expectation of more; that he, Commandant Pinedo, could therefore act as he might think fit. Commandant Pinedo, imme-

diately withdrew, declaring Great Britain responsible for the insult, and the violation of the dignity of the Republic and of its rights, which were thus inconsistently and disrespectfully trampled on, by force; that he was going to withdraw, but that he would not strike the flag on the shore.

Consequently, Commandant Pinedo returned to his vessel; and adopted, among other measures, prior to setting sail, that of prohibiting those on the island from lowering the Argentine flag, and of conferring the command of the establishment, in writing, on the overseer of the establishment Don Juan Simon, who was going to remain, with some others.

At nine o'clock in the morning of the 3d, three boats manned with seamen and marines, from the English sloop, landed at the point of Port Luis, and placing a staff at the house of an Englishman, about four squares distant from the commandantcy, they hoisted thereon the British flag, and then proceeded to strike that of the Republic, which was still flying; and which was immediately delivered to the Sarandí by an officer sent for that purpose. Capt. Pinedo was ready, on that day, to remove from the scene of the insult; but the weather obliged him to remain the whole of the 4th and up to 5 o'clock on the evening of the 5th, when he set sail.

The facts, as transmitted by the government to the honorable representatives, in conformity with the official despatch of the commander of the schooner Sarandí, exhibit a most flagrant abuse of power, and belie the friendly protestations it was accustomed to receive from a nation with which it endeavored to maintain the best understanding, by scrupulously fulfilling the duties imposed on it by the existing treaties, and exercising a generous liberality, in proof of the most sincere friendship. By the copies Nos. 2, 3, and 4, the honorable representatives will learn what steps have been taken by the government in this serious and delicate affair; and likewise its firm resolution to maintain the rights of the Argentine Republic, and not to come to any accommodation inconsistent with the national honor; taking every measure which justice and prudence may dictate, for the purpose of obtaining from the cabinet of H. B. M. full reparation, the acknowledgment of our right to the Malvinas, and the exercise of our dominion over that territory; and should this not suffice, then to adopt such measures as may be most conducive to obtaining a declaration of the opinion of the world, to which a government like that of England, which wishes to be considered as ranking among the most free and enlightened of Europe, cannot be indifferent.

God preserve the honorable representatives many years.

JUAN RAMON BALCARCE.

MANUEL VICENTE DE MAZA.



[No. I.]

(COPY.)

HIS MAJESTY'S SLOOP CLIO, }
 Berkley Sound, 2d January, 1833. }

SIR :

I have to acquaint you, I have received directions from his Excellency the Commander in Chief of his Britannic Majesty's ships and vessels of war, South American station, *in the name of his Britannic Majesty*, to execute the "rights of sovereignty over these islands."

It is my intention to hoist, to-morrow morning, the national flag of Great Britain on shore, when I request you will be pleased to haul down your flag on shore, and withdraw your forces, taking with you all stores, &c., belonging to your Government.

I am, Sir,

Your most obedient humble servant,

J. J. ONSLOW, Commander.

His Excellency the Commander of
 the Buenos Ayrean forces at Port Louis,
 Berkley Sound.



[No. II.]

(TRANSLATION.)

TO THE CHARGÉ D'AFFAIRES AD INTERIM OF H. B. M.

DEPARTMENT OF FOREIGN RELATIONS,
Buenos-Ayres, January 16, 1833.
24th year of the Liberty, and 18th of the Independence of the Republic.

THE undersigned, Minister of Grace and Justice, charged provisionally with the Department of Foreign Relations of the Argentine Republic, has the honor to address the Chargé d'Affaires *ad interim* of H. B. M. in this city to acquaint him, that the government has just learned that the commander of H. B. M.'s sloop-of-war Clio has taken possession of the island of La Soledad, in the Malvinas, hoisting the British flag where that of the Argentine Republic waived. This unexpected event has sensibly affected the feelings of the Government of Buenos Ayres; and although it cannot discover any thing to justify such a proceeding, nevertheless, presuming that the Chargé d'Affaires whom the undersigned addresses, is informed upon a measure which openly compromises the dignity and rights of the Argentine Republic, it has directed the undersigned to request of the Chargé d'Affaires of H. B. M., the competent explanations.

God preserve the Chargé d'Affairs many years.

MANUEL VICENTE DE MAZA.



[No. III.]

(COPY.)

BUENOS-AYRES, January 17, 1833.

THE undersigned, his Britannic Majesty's Chargé d'Affaires, in acknowledging the receipt of the note, dated yesterday, of his Excellency Señor Don Manuel Vicente de Maza, Minister charged with the Department of Foreign Relations of the Argentine Republic, has the honor to inform his Excellency that he has received no instructions from his court to make any communication to the government of Buenos Ayres upon the subject to which his Excellency's note refers.

The undersigned will hasten to submit it to his Majesty's government, and he avails himself of this opportunity to repeat to his Excellency Señor de Maza the assurance of his high and distinguished consideration.

PHILIP G. GORE.

To His Excellency

Señor Don MANUEL VICENTE DE MAZA,

&c. &c.



[No. IV.]

(TRANSLATION.)

TO THE CHARGÉ D'AFFAIRES OF H. B. M.
PHILIP G. GORE, EsqR.

DEPARTMENT OF FOREIGN RELATIONS, }
Buenos-Ayres, January 22, 1833. }

THE undersigned, Minister of Grace and Justice, charged provisionally with the Department of Foreign Relations of the Argentine Republic, is directed by his government to address the Chargé d'Affaires *ad interim* of H. B. M. in this city, and inform him, that on the 2d inst. H. B. M's sloop-of-war Clio anchored in the Port of San Luis, in the island of La Soledad, one of the Malvinas, for the purpose of taking possession of them as belonging to H. B. M.;—Capt. Onslow of the said vessel stating that he had positive orders to hoist the British flag on shore within twenty four hours. He had already done so in other ports of the islands, and finally did the same in that of La Soledad, in defiance of the protests of the commander of the schooner-of-war Sarandí, who was there in fulfilment of orders from his government, which through a fatality of unforeseen circumstances, he could not strictly perform, by forcibly resisting the occupation of the islands.—The undersigned abstains, for the present, from expatiating on the inconsistency of such a violent and rude proceeding in a time of profound peace, when the close and friendly relations between the two Governments on the one hand, and on the other the moderation, cordiality and purity of intentions, of which England has made ostentation, gave no reason to expect that the confidence in which the Argentine Republic reposed would be so unceremoniously violated. Nevertheless, in fulfilment of the orders of his government and in its name, in consideration of what we owe to our own dignity, to posterity and to the deposit which the United Provinces have entrusted to the government of Buenos Ayres, and in short, to the whole world whose eyes are fixed upon us,—the undersigned protests in the most for-

mal manner against the pretensions of the government of Great Britain to the Malvina Islands, and its occupation of them, as likewise against the insult offered to the flag of the Republic, and against the damages which the latter has received and may receive in consequence of the aforesaid proceedings, and whatever may hereafter take place on the part of the British government in this respect. The Chargé d'Affaires, whom the undersigned addresses, will please transmit this protest to his government, and manifest the decided resolution of this Republic to sustain its rights, at the same time that it desires to maintain inviolate the friendly relations which it has hitherto cultivated with Great Britain, and that peace may prosper and be perpetual between both States.

God preserve the Chargé d'Affaires, Philip G. Gore, Esqr., many years.

MANUEL VICENTE DE MAZA.



[No. V.]

(COPY.)

BUENOS-AYRES, January 24th, 1833.

THE undersigned, his Britannic Majesty's Chargé d'Affaires, has the honor to acknowledge the receipt of the note, which his Excellency Señor Don Manuel Vicente de Maza, Minister of Grace and Justice, charged with the Department of Foreign Relations of the Argentine Republic, has addressed to him, dated 22d instant.

The undersigned will lose no time in transmitting his Excellency's note to his Majesty's government.

He avails himself of this opportunity to renew to his Excellency Señor de Maza the assurance of his high and distinguished consideration.

PHILIP G. GORE.

His Excellency
Señor Don MANUEL VICENTE DE MAZA,
&c. &c.

ERRATA.



- Page 19—line 44—for *had been*, read, had not been.
" 47— " 7—for *assented*, " asserted.
" 50— " last—for *Magellan*, " Magdalen.
" 63— " 11—for *these*, " those.
" 65— " 34—for *transgression*, " aggression.
" 67— " 5—for *returned*, " rendered.
" 68— " 42—for *if whether*, " whether.
" 69— " 14—for *listening*, " by listening.
" " — " 26—for *palatable*, " palpable.
" 122— " 42—for *indissolutely*, " indissolubly.

☞ Several typographical errors have unavoidably occurred;—
but, as they do not alter the sense, it has not been deemed
necessary to notice them.

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